Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1976.

No. 75-1812

R. F. SHAFFER, et al.,

Appellants,

v.

ARNOLD HEITNER, as Custodian for
MARK ANDREW HEITNER,

Appellee.

On Appeal From the Supreme Court of the
State of Delaware.

JURISDICTIONAL STATEMENT FILED JUNE 15, 1976.
PROBABLE JURISDICTION NOTED OCTOBER 4, 1976.

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IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as Custodian for
MARK ANDREW HEITNER,

Plaintiff,

v.

THE GREYHOUND CORPORATION, et al.,

Defendants.

RELEVANT DOCKET ENTRIES

1. May 22, 1974 Complaint for an Order of Sequestration—Filed

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4. May 22, 1974 Motion for Order of Sequestration—Filed

5. May 22, 1974 Signed Order of Sequestration by C. Quillen on 5-22-74 Appointing Stanley C. Macel, Esq. as Sequestrator—Filed

• • •

7. May 22, 1974 Sequestrator's Bond—Filed

8. May 23, 1974 Plaintiff's Bond—Filed

9. June 7, 1974 Sequestrator's Report, Petition for Allowance and Order Thereon signed by C. Quillen on 6-7-74

• • •

16. July 30, 1974 Notice, Motion to Quash Service of Process, To Vacate Order Sequestration, and To Dismiss—Filed

17. July 31, 1974 Answer of Defendants—The Greyhound Corporation and Greyhound Lines, Inc.—Filed

18. July 31, 1974 Motion to Vacate Order of Sequestration and to Dismiss—Filed

• • •

23. Aug. 22, 1974 Notice, Motion, Proposed Order for Leave to Amend Complaint. Proposed Alias Order of Sequestration, Affidavit—Filed

    Hearing Held Before V. C. Brown on 8-28-74 on 1. Motion to Amend Complaint 2. Motion to Vacate Sequestration 3. Alias Order of Sequestration. Decision: All Three Granted

• • •

29. Sept. 9, 1974 Motion to Vacate Order of Sequestration and to Dismiss—Filed

30. Sept. 10, 1974 Notice, Motion to Quash Service of Process, To Vacate Alias Order of Sequestration and To Dismiss—Filed

31. Sept. 13, 1974 Stipulation and Order signed by V. C. Brown on 9-13-74 for Brief Schedule: Def. Opening Brief Already Filed Plt. Answering Brief Due 10-24-74 Def. Reply Brief Due 11-19-74 Arg. 11-26-74 at 11:00

• • •

40. May 14, 1975 Letter of Opinion to Counsel from V. C. Brown dated 5-12-75 that Motions to Quash and Vacate the Order of Sequestration and in

the case of individual defendants to Dismiss the Complaint are Denied; It Is So Ordered—Filed

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42. June 6, 1975 Notice of Appeal—Filed

• • •

SUPREME COURT OF THE STATE OF DELAWARE

20. April 20, 1975 Opinion of The Supreme Court of Delaware, dated April 15, 1976

• • •

22. May 7, 1975 Notice of Appeal to Supreme Court of the United States

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,

Plaintiff,

-against-

THE GREYHOUND CORPORATION, GREYHOUND LINES, INC., R. F. SHAFFER, J. L. KERRIGAN, F. L. NAGEOTTE, GERALD H. TRAUTMAN, BART COOK, R. N. DICK, WILLIAM E. HASTINGS, F. W. ACHERMAN, WILLIAM R. ADAMS, HOWARD BOYD, ESTATE OF FREDERICK L. EHRMAN, PAUL E. HOOVER, H. A. MONTAGUE, CHARLES S. MUNSON, RANKIN M. SMITH, HANS STAUFFER, HAROLD C. STUART, JAMES W. WALKER, LESLIE B. WORTHINGTON, WILLIAM WOOD PRINCE, MILTON STEINBACK, JESS NICKS, RALPH C. BATASTINI, ROBERT MINGE BROWN, DAVID L. DUENSING, CHARLES R. OREM, CLIFTON B. COX and M. J. O'ROURKE,

Defendants.

COMPLAINT

Plaintiff, for his complaint against the defendants, alleges upon information and belief, except as to Paragraph "1" hereof, which he alleges on knowledge.

AS AND FOR A FIRST CAUSE OF ACTION

1. (a) Plaintiff is a stockholder of the defendant, THE GREYHOUND CORPORATION (herein called the "Parent Corporation").

(b) Plaintiff was a stockholder of the Parent Corporation at the time of the transactions, wrongs and damages complained of herein. Reference is made herein to dates preceding plaintiff's stock ownership for the purpose of affording historical background and of establishing a continuous course of conduct.

(c) Plaintiff brings this action derivatively in the right and for the benefit of the Parent Corporation and representatively on behalf of and for the benefit of all of its stockholders who are similarly situated, and also on behalf of and in the right of GREYHOUND LINES, INC. (hereinafter the "Subsidiary Corporation").

2. (a) The Parent Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Phoenix, Arizona.

(b) The Subsidiary Corporation is a corporation organized and existing under the laws of the State of California, with its principal place of business in Phoenix, Arizona. It is a wholly owned subsidiary of THE GREYHOUND CORPORATION (Parent Corporation).

(c) The Parent Corporation and the Subsidiary Corporation are the largest common carriers of passengers by motor vehicle in the United States, authorized to operate throughout most of the country.

(d) Whenever used herein "Greyhound" shall mean the Parent Corporation and the Subsidiary Corporation (The Greyhound Corporation and Greyhound Lines, Inc.).

3. The individual defendants, except F. L. Nageotte, Bart Cook, R. N. Dick, William E. Hastings and M. J. O'Rourke, were and are officers and directors of the Parent Corporation during the periods below:

R. F. Shaffer	1966–Present
J. L. Kerrigan	1971–Present
Gerald H. Trautman	1965–Present
F. W. Acherman	1957–1971
William R. Adams	1962–Present
Howard Boyd	1967–Present
Frederick L. Ehrman	1965–1974
Paul E. Hoover	1962–1970
H. A. Montague	1966–1971
Charles S. Munson	1956–Present
Rankin M. Smith	1967–Present
Hans Stauffer	1957–Present
Harold C. Stuart	1959–Present
James W. Walker	1962–Present
Leslie B. Worthington	1966–Present
William Wood Prince	1969–1970
Milton Steinback	1969–1971
Jess Nicks	1969–Present
Ralph C. Batastini	1971–Present
Robert Minge Brown	1971–Present
David L. Duensing	1970–Present
Charles R. Orem	1970–1971
Clifton B. Cox	1971–Present

4. The defendant, R. F. SHAFFER (hereinafter called "Shaffer") is President of the Parent Corporation. The defendant, J. L. KERRIGAN (hereinafter called "Kerrigan") is President of the Subsidiary Corporation. The defendant, F. L. NAGEOTTE (hereinafter called "Nageotte") is President of Greyhound Lines–West, an operating division of the Subsidiary Corporation, with its principal place of business in San Francisco, California. The defendant, BART COOK (hereinafter called "Cook") is the Vice President of Traffic for Greyhound Lines–West. The defendant R. N. DICK (hereinafter called "Dick") is the Vice President of Transportation for Greyhound Lines–West. The defendant M. J. O'ROURKE (hereinafter called "O'Rourke") is the Vice President of Traffic for Greyhound Lines–East, and the defendant, WILLIAM E. HASTINGS (hereinafter called "Hastings") is the Staff Vice President of the Subsidiary Corporation. The defendants, SHAFFER, KERRIGAN, NAGEOTTE and COOK are, and at all pertinent times herein mentioned have been, actively engaged in the management, direction and control of Greyhound's affairs and were the officers of Greyhound who are responsible for the illegal acts hereinafter alleged.

5. On May 27, 1969, Greyhound filed in the United States District Court, for the Northern District of Illinois, (hereinafter called the "District Court"), an action bearing Civil Action No. 69-C-1148, appealing a cease and desist order of the Interstate Commerce Commission. The Interstate Commerce Commission and the United States of America filed a counterclaim, praying an injunction be granted against Greyhound that they cease from certain enumerated practices against Mount Hood Stages, Inc. (hereinafter called "Mt. Hood") and directing Greyhound to restore practices and traffic patterns which existed between Greyhound and Mt. Hood, or were in contemplation, as of July 30, 1952. Three interested parties, Mt. Hood, National Trailways Bus System and the Public Utilities Commission of Oregon were permitted to intervene.

6. On February 5, 1970, the District Court entered a decision on the merits and an order which denied Greyhound's motion to set aside the order of the Interstate Commerce Commission and affirmed the Commission's prior order. The Court further ordered that the counterclaim of the United States and the Interstate Commerce Commission be granted as follows:

> "It is ordered that Greyhound Lines, Inc. and Greyhound Corporation restore practices and traffic

patterns in existence or in contemplation as of July 30, 1952, in particular:

(1) that Greyhound show Mt. Hood schedules in Greyhound folders on an equal basis with other non-Greyhound lines;

(2) that Greyhound restore the through bus service which Greyhound operated until September 8, 1964, in connection with Mt. Hood via Klamath Falls and Biggs (The Dalles), Oregon, and discontinue the bus service Greyhound has operated in substitution therefor since then via Portland, Oregon;

(3) that Greyhound revise its interline schedules in connection with Mt. Hood so as to eliminate the presently existing delay of approximately three hours for passengers seeking to travel between California and Spokane via Mt. Hood's route and to negotiate in good faith with Mt. Hood on the establishment of bus schedules most advantageous to the traveling public;

(4) that Greyhound voluntarily and accurately quote joint through routes in connection with Mt. Hood, without geographical limitations in a manner fully responsive to inquiries from the traveling public;

(5) that Greyhound cease and desist from quoting Mt. Hood's service unfavorably or inaccurately in response to inquiries from the traveling public and from not quoting Mt. Hood's service at all in response to specific requests from the traveling public;

(6) that Greyhound show Mt. Hood's connecting routes on its maps on an equal basis with other non-Greyhound carriers;

(7) that Greyhound permit Mt. Hood's representatives to call on Greyhound's agents;

(8) that Greyhound establish joint through fares with Mt. Hood;

(9) that Greyhound cease and desist from discriminating against Mt. Hood at depots that Hood occupies with Greyhound; and

(10) that Greyhound cease and desist from influencing Commission agents selling both Greyhound and Mt. Hood tickets to favor Greyhound".

7. The defendants, SHAFFER, KERRIGAN and NAGEOTTE, with knowledge of the District Court order of February 5, 1970, willfully violated its above provisions, in that they failed to embark upon a program of compliance that would meet the requirements of the order; failed to take any steps toward compliance with some paragraphs of that order; purported to interpret the order in such a way as to render it meaningless and acted under twisted interpretations of parts of the Court's order.

8. As a result of the foregoing, Greyhound was caused to violate the provisions of the District Court order of February 5, 1970.

9. On June 22, 1971, the United States of America and Interstate Commerce Commission filed criminal and civil contempt of Court proceedings for failure to comply with the District Court order of February 5, 1970. The civil contempt petition named as respondents, The Greyhound Corporation, Greyhound Lines, Inc., R. F. Shaffer, J. L. Kerrigan and F. L. Nageotte. The criminal contempt petition was directed at the Greyhound Corporation and Greyhound Lines, Inc. The two petitions were consolidated for all purposes in accordance with a pre-trial order of March 8, 1972.

10. On June 22, 1973, the United States District Court, Northern District of Illinois (District Court) issued its

memorandum and order finding Greyhound guilty of criminal contempt for violation of Paragraphs 1, 3, 4, 5 and 6 of the order set forth in Paragraph 6 above. The Court also found Greyhound, and the defendants SHAFFER, KERRIGAN and NAGEOTTE in civil contempt for continuing violations of Paragraphs 3, 4 and 5 of said order. Thereafter in its memorandum and order on issue of sanctions for criminal and civil contempt, dated January 22, 1974, a fine of $100,000 was imposed upon the Parent Corporation and a fine of $500,000 was imposed upon the Subsidiary Corporation.

11. In or about 1968, a civil proceeding was commenced in the United States District Court, Oregon District, under Civil action No. 668-374 in an action entitled Mt. Hood Stages, Inc. v. The Greyhound Corp., et al., charging violations of the antitrust laws by acts of Greyhound. Said action was tried in 1973 and the jury found Greyhound guilty of three violations of the antitrust laws. The Court entered a judgment in Mt. Hood's favor in the sum of $13,146,090 and for its reasonable attorneys fees. Greyhound's motion for a new trial and a judgment notwithstanding the verdict were denied by the Court on November 29, 1973.

12. The entry of the order of February 5, 1970 referred to in Paragraph 6 above, and the institution of the civil antitrust action referred to in Paragraph 11 above, required the individual defendants so to conduct the affairs of Greyhound as to minimize the risk of further antitrust violations and damages resulting therefrom, and to eliminate the risk of contempt sanctions including fines for violation of Court orders.

13. Notwithstanding this duty to the corporations and their stockholders, the individual defendants (a) during the period commencing approximately 1964 to 1973 either entered into, engaged in or participated in or authorized, approved, ratified or acquiesced in, the aforesaid plan and conspiracy under which Greyhound, eliminated competition and restrained trade in violation of the antitrust laws; (b) during the period February 5, 1970 to January 22, 1974, engaged in a course of conduct which evidenced a willful failure and contemptuous refusal to commence compliance with the order of February 5, 1970 and generally failed to fulfill its obligations to the Court in a timely and expeditious manner.

14. As a result of the foregoing, Greyhound has already sustained substantial losses and will sustain additional losses hereafter as follows:

a) Greyhound has spent and will be obligated to spend in the future large sums for legal fees and expenses in connection with the aforesaid civil and criminal proceedings;

b) Greyhound has paid and/or will be required to pay substantial sums of money by way of fines for criminal contempt of Court, including $100,000 imposed upon the Parent Corporation and $500,000 imposed upon the Subsidiary Corporation;

c) Greyhound has paid and/or will be required to pay substantial sums of money by way of multiple damages for violation of the antitrust laws and in defense of same;

d) Greyhound has expended large sums for public relations and advertising in order to enhance and promote the good will of the company, the value of which has been wasted, impaired and destroyed by the unfavorable publicity given to Greyhound in connection with its antitrust violations and contempt of Court;

e) Greyhound has been compelled to pay for the time of executives and other employees of the Corporation taken up in conducting said illegal course of conduct and in defending against the aforementioned contempt proceedings and the aforementioned antitrust action.

15. By reason of the aforesaid, Greyhound has already sustained substantial losses and will sustain additional losses hereafter. The amount of monies already expended by Greyhound on account of the improper and illegal acts described above is unknown and can only be ascertained upon an accounting.

16. Each of the individual defendants engaged in or acquiesced in the transactions referred to above and acted recklessly, negligently and in disregard of his obligations as director or officer of Greyhound.

17. Plaintiff has made no demand upon the individual defendants as directors of Greyhound to take action with respect to the wrongs herein complained of because all of them have either participated in, authorized or approved the transactions complained of herein and have taken no steps to prevent any of such actions or to seek redress therefor although such defendants have had knowledge thereof. The individual defendants who comprise the membership of the Board of Directors of Greyhound are themselves defendants in this action and they would not and could not diligently prosecute this action because they would have had to bring it against themselves.

18. Plaintiff has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

19. Plaintiff repeats and realleges all of the allegations contained in Paragraphs "1" through "18" hereof.

20. A Deferred Compensation Plan of Greyhound has been in effect since at least April 1, 1971. The Plan provides for the issuance of stock unit credits to participants. The persons eligible to participate in the Plan are those employees who are mainly responsible for management operations.

21. During the years 1971 to 1973, at least $7,500,000, was paid to executives of Greyhound including some executives who are individual defendants herein and were and still are also directors of Greyhound.

22. At all of the times aforementioned, the individual defendants of Greyhound knew about or participated in causing Greyhound to engage in the aforesaid contempt of Court and violations of the antitrust laws of the United States. In fixing the amounts to be credited to the various participants of the Deferred Compensation Plan, said defendants failed to establish a separate and adequate reserve to provide for the large expenses, fines and damages which have resulted, might result in the future, and could have been reasonably anticipated to result from the wrongs aforementioned.

23. At all of the times aforementioned, the amounts appropriated to the Deferred Compensation Plan and the amounts paid or credited as deferred compensation to the directors, officers and employees of Greyhound were excessive, unlawful, improvident and wasteful resulting in large damages to Greyhound and its stockholders.

24. As a result of the foregoing, the amounts appropriated, credited or disbursed pursuant to the Deferred Compensation Plan were improper and excessive and constituted a gift and waste of the assets of Greyhound.

25. As a result of the foregoing, the directors, officers and employees who share in the Deferred Compensation Plan were unjustly enriched to the loss and detriment of

Greyhound and its shareholders and should be required to account therefor.

26. As a result of the foregoing, the continued payments of deferred compensation to the directors, officers and employees are illegal and unlawful and will result in an irreparable injury to Greyhound unless they are enjoined.

AS AND FOR A THIRD CAUSE OF ACTION

27. Plaintiff repeats and realleges all of the allegations contained in Paragraphs "1" through "18" and "20" through "26" hereof.

28. Pursuant to a Stock Option Plan approved by the stockholders of Greyhound, options to purchase shares of the stock of Greyhound have been granted from time to time to various officers and directors, including some officers who are individual defendants herein and are directors of Greyhound.

29. Some of the individual defendants herein are among the officers and directors to whom said options to purchase shares of the stock of Greyhound have been granted but remain unexercised.

30. As a result of the aforesaid, the continued employment of the said persons by Greyhound would be improvident, improper, contrary to public morals and injurious to the interests of Greyhound and should be terminated forthwith for cause.

31. As a result of the aforesaid, the options of said individual defendants not heretofore exercised should be cancelled forthwith.

32. By reason of the foregoing, the continued granting of options to said individual defendants is illegal and unlawful and would result in irreparable injuries to Greyhound and should be enjoined.

WHEREFORE, plaintiff demands judgment as follows:

(a) That the individual defendants jointly and severally account to Greyhound for all losses, expenses and damages sustained by Greyhound and which will be sustained by Greyhound up to the time of trial by reason of the actions set forth in this complaint;

(b) That the individual defendants jointly and severally post security in such amount as the Court may require to indemnify Greyhound and save it harmless against any future losses, expenses and damages arising by reason of the actions set forth in this complaint;

(c) Terminating the options granted under the Stock Option Plan to the individual defendants who engaged in the wrongful actions complained of herein;

(d) Enjoining further payments to defendants herein under the Deferred Compensation Plan;

(e) Awarding plaintiff costs and disbursements of this action, including reasonable counsel fees;

(f) Granting plaintiffs such other, further and different relief as to the Court may deem just and proper in the premises.

BAYARD, BRILL & HANDELMAN, ESQS.
By /s/ HOWARD M. HANDELMAN
Howard M. Handelman, Esq.
Attorneys for Plaintiff
300 Market Tower
Wilmington, Delaware 19801

Of Counsel:
COWAN, LIEBOWITZ & LATMAN, P.C.
200 East 42nd Street
New York, New York 10017

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ARNOLD HEITNER, being duly sworn, deposes and says that he is the plaintiff in the within action, and that he has read the foregoing Complaint and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

/s/ ARNOLD HEITNER
Arnold Heitner

Sworn to and subscribed before me
the 16th day of May, 1974.

/s/ ROBERT SACK
Notary Public, State of New York
No. 31-8734660
Qualified in New York County
Term Expires March 30, 1976

Form 1

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

No. 53630

I, NORMAN GOODMAN, County Clerk and Clerk of the Supreme Court of the State of New York, in and for the County of New York, a Court of Record, having by law a seal,

DO HEREBY CERTIFY pursuant to the Executive Law of the State of New York, that Robert Sack whose name is subscribed to the annexed affidavit, deposition, certificate of acknowledgment or proof, was at the time of taking the same a NOTARY PUBLIC in and for the State of New York duly commissioned, sworn and qualified to act as such; that pursuant to law, a commission or a certificate of his official character, with his autograph signature has been filed in my office; that at the time of taking such proof, acknowledgment or oath, he was duly authorized to take the same; that I am well acquainted with the handwriting of such NOTARY PUBLIC or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and I believe that such signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this May 17, 1974.

/s/ NORMAN GOODMAN
County Clerk and Clerk of the
Supreme Court, New York
County

Fee Paid $3.00

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,

Plaintiff,

v.

THE GREYHOUND CORPORATION, et al.,

Defendants.

MOTION FOR ORDER OF SEQUESTRATION

Plaintiff moves for an Order of Sequestration pursuant to 10 *Del. C.* §366 with respect to Defendants R. F. Shaffer, J. L. Kerrigan, F. L. Nageotte, Gerald H. Trautman, Bart Cook, R. N. Dick, William E. Hastings, F. W. Acherman, William R. Adams, Howard Boyd, Estate of Frederick L. Ehrman, Paul E. Hoover, H. A. Montague, Charles S. Munson, Rankin M. Smith, Hans Stauffer, Harold C. Stuart, James W. Walker, Leslie B. Worthington, William Wood Prince, Milton Steinback, Jess Nicks, Ralph C. Batastini, Robert Minge Brown, David L. Duensing, Charles R. Orem, Clifton B. Cox and M. J. O'Rourke, who are non residents of the State of Delaware as more fully appears in the Complaint filed in this action and in the affidavit of Howard M. Handelman, Esquire attached hereto.

By /s/ HOWARD M. HANDELMAN
Howard M. Handelman
300 Market Tower
Wilmington, Delaware 19801
Attorneys for Plaintiff

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,

Plaintiff,

v.

THE GREYHOUND CORPORATION, GREYHOUND LINES, INC., R. F. SHAFFER, J. L. KERRIGAN, F. L. NAGEOTTE, GERALD H. TRAUTMAN, BART COOK, R. N. DICK, WILLIAM E. HASTINGS, F. W. ACHERMAN, WILLIAM R. ADAMS, HOWARD BOYD, ESTATE OF FREDERICK L. EHRMAN, PAUL E. HOOVER, H. A. MONTAGUE, CHARLES S. MUNSON, RANKIN M. SMITH, HANS STAUFFER, HAROLD C. STUART, JAMES W. WALKER, LESLIE B. WORTHINGTON, WILLIAM WOOD PRINCE, MILTON STEINBACK, JESS NICKS, RALPH C. BATASTINI, ROBERT MINGE BROWN, DAVID L. DUENSING, CHARLES R. OREM, CLIFTON B. COX and M. J. O'ROURKE,

Defendants.

SEQUESTRATION ORDER

This 22nd day of May, 1974, it appearing that R. F. SHAFFER, J. L. KERRIGAN, F. L. NAGEOTTE, GERALD H. TRAUTMAN, BART COOK, R. N. DICK, WILLIAM E. HASTINGS, F. W. ACHERMAN, WILLIAM R. ADAMS, HOWARD BOYD, ESTATE OF FREDERICK L. EHRMAN, PAUL E. HOOVER, H. A. MON-

TAGUE, CHARLES S. MUNSON, RANKIN M. SMITH, HANS STAUFFER, HAROLD C. STUART, JAMES W. WALKER, LESLIE B. WORTHINGTON, WILLIAM WOOD PRINCE, MILTON STEINBACK, JESS NICKS, RALPH C. BATASTINI, ROBERT MINGE BROWN, DAVID L. DUENSING, CHARLES R. OREM, CLIFTON B. COX and M. J. O'ROURKE are non residents of the State of Delaware having property in the State of Delaware.

It is, upon motion of HOWARD M. HANDELMAN, ESQUIRE, attorney for the Plaintiff, ordered as follows:

1. The Defendants named in the preceding paragraph shall appear in this Court and answer the complaint on or before the 1st day of July, 1974 and a summons shall issue directing them to appear on said date. On or before the 27th day of May, 1974, the Register shall send by certified mail to each of said Defendants at his address as set forth in the Affidavit of Howard M. Handelman, a copy of the summons, of the complaint and of this Order. The Register shall cause a copy of this order to be published in a newspaper published in the City of Wilmington, New Castle County, State of Delaware, once a week for three consecutive weeks, commencing the week following the entry of this Order.

2. Stanley C. Macel, of the City of Wilmington, State of Delaware, is hereby appointed Sequestrator to seize and hold pursuant to the succeeding terms of this Order, property of the Defendants in the State of Delaware, consisting of common stock, 3% Second Cumulative Preference Stock, stock unit credits, of the Greyhound Corporation and all options and all warrants to purchase the common or preferred stock of said corporation issued to the Defendants and all contractual obligations, rights, debts or credits due or accrued to or for the benefit of any of said Defendants under any type of written instrument, contract or other

legal instrument of any kind whatever between any of the Defendants and said corporation (hereinafter "property").

3. The Sequestrator shall have power to seize the aforesaid property standing in the name of said Defendants, or in or which they may have or hold any right, title or interest, legal or equitable, with all the rights belonging or appertaining to the aforesaid property, including any and all dividends or interest payments which may be due or payable with respect to said property. The property may be sold under an Order of this Court to pay the demand of the Plaintiff in this cause if any of the aforesaid named Defendants do not appear or do otherwise default; and, subject to the provisions of paragraph 4 hereof, said property shall remain subject to such seizure and may be sold to satisfy any decree made in this cause unless security sufficient to this Court shall be given to secure the release thereof.

4. In the event that the Defendants or any one of them shall make a bona fide sale or sales of any of the aforesaid property seized hereunder, and shall receive therefor not less than the market price at the time of sale and shall deposit with the Sequestrator the proceeds of such sale or sales, the Sequestrator shall forthwith advise the Greyhound Corporation of such facts and thereupon the property sequestered and seized and so sold shall be released from such sequestration and seizure without further action of any kind by the Sequestrator or this Court; and in such event, the proceeds of any such sale shall be held by the Sequestrator until further order of this Court in lieu of the property initially seized and so sold; provided, further, that the proceeds of any such sale or sales shall be subject to investment and reinvestment, by the Sequestrator in such property and upon such terms and conditions as the De-

fendants may from time to time direct in writing, provided always that the property in which such proceeds are invested and reinvested (as well as any uninvested proceeds of any sale of such property) shall be held by and in the name of the Sequestrator, pursuant to the terms of this Order and until further Order of this Court.

In the event that said Greyhound Corporation shall desire to make any payments under any agreement, contract or other legal instrument of any kind whatsoever between any of said Defendants and said corporation being seized under this Order by the Sequestrator, any such obligations, rights, debts or credits may be discharged by the payment of the sums due from said corporation, as may be appropriate, to the Sequestrator and said corporation, as may be appropriate, may receive a full and complete discharge of said contractual obligations, rights, debts or credits from each or any of said Defendants, and the Sequestrator hereinbefore appointed; and in such event, the proceeds of the payment of any of the aforesaid contractual obligations, rights, debts or credits shall be held by the Sequestrator until the further order of this Court in lieu of the contractual obligations, rights, debts or credits initially seized and so paid or discharged, provided further that the proceeds of any such payment or payments shall be subject to investment and reinvestment by the Sequestrator upon such terms and conditions as each or any of said Defendants may from time to time direct in writing; provided always that the property in which such proceeds are invested and reinvested (as well as any uninvested proceeds of any such payment) shall be held by and in the Sequestrator, pursuant to the terms of this Order and until the further Order of this Court.

5. The Sequestrator shall forthwith serve upon the Greyhound Corporation a certified copy of this Order and

demand that said corporation shall (a) deliver to him within ten (10) days after such service a statement of the number of shares of stock, options and warrants held or owned or standing in the name of each of said Defendants, or in or to which all or any of said Defendants have any right, title or interest, legal or equitable, with the number or numbers of the certificate or certificates or note or notes or other marks distinguishing the same and the dates the same were issued, and all rights of any kind thereon belonging or appertaining; (b) deliver to him within ten (10) days after such service a statement of the number of options and warrants to purchase shares of the common and preferred capital stock held by each of said Defendants and the mark or symbol used to identify any written evidence of such options or warrants; (c) cause entries to be made on the books of the Greyhound Corporation showing that the securities held or owned or standing in the name of said Defendants or held beneficially for them and the rights or interest therein are held by such Sequestrator; (d) cause entries to be made on the proper records of such Greyhound Corporation showing that all said options and warrants to purchase shares of stock in said corporation are held by such Sequestrator; (e) demand that said Greyhound Corporation shall not until further Order of this Court pay any or all the contractual obligations, rights, debts or credits due under any type of agreement, contract or other legal instrument of any kind whatever between any of said Defendants and said corporation except as hereinbefore provided in paragraph 4 and that none of the said Defendants shall receive any such payment, except in conformity with the further Order of this Court; (f) in general and subject to the provisions of paragraph 4 hereof, do all acts necessary to hold and preserve the said securities, options and warrants and said contractual obligations, rights, debts or credits until further Order of this Court.

6. The Sequestrator shall qualify by filing in this Court a bond in the sum of One Thousand Dollars ($1,000.00) with National Surety Corporation, an Illinois corporation as surety, which bond need only be executed by the surety. The condition of said bond shall be that the Sequestrator shall well and truly perform the duties of this office and shall duly account for all property which may come into his hands as such Sequestrator.

7. Plaintiff shall file in this Court a bond in the sum of One Thousand Dollars ($1,000) with National Surety Corp. an Illinois corporation as surety which bond need only be executed by the surety. The condition of said bond shall be that the Plaintiff shall abide with any Order of the Court respecting the property herein ordered to be seized and sequestered.

/s/ WILLIAM T. QUILLEN,
Chancellor.

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No.

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,

Plaintiff,

against

THE GREYHOUND CORPORATION, GREYHOUND LINES, INC., R. F. SHAFFER, J. L. KERRIGAN, F. L. NAGEOTTE, GERALD H. TRAUTMAN, BART COOK, R. N. DICK, WILLIAM E. HASTINGS, F. W. ACHERMAN, WILLIAM R. ADAMS, HOWARD BOYD, ESTATE OF FREDERICK L. EHRMAN, PAUL E. HOOVER, H. A. MONTAGUE, CHARLES S. MUNSON, RANKIN M. SMITH, HANS STAUFFER, HAROLD C. STUART, JAMES W. WALKER, LESLIE B. WORTHINGTON, WILLIAM WOOD PRINCE, MILTON STEINBACK, JESS NICKS, RALPH C. BATASTINI, ROBERT MINGE BROWN, DAVID L. DUENSING, CHARLES R. OREM, CLIFTON B. COX and M. J. O'ROURKE.

Defendants.

AFFIDAVIT PURSUANT TO RULES 4(da) and 4(db)

HOWARD M. HANDELMAN, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of Delaware and a member of the firm of *Bayard, Brill and Handelman,* attorneys for plaintiff in this action.

2. This affidavit is filed in support of plaintiff's motion for an order of sequestration pursuant to 10 Del. C. §366.

3. The individual defendants named in this action are non-residents of the State of Delaware whose last known post office addresses are as follows:

Name	*Address*
R. F. Shaffer	c/o The Greyhound Corporation 111 West Clarendon Phoenix, Arizona
J. L. Kerrigan	c/o The Greyhound Lines, Inc. 371 Market Street San Francisco, California
F. L. Nageotte	c/o Greyhound Lines-West 371 Market Street San Francisco, California
Gerald H. Trautman	c/o The Greyhound Corporation 111 West Clarendon Phoenix, Arizona
Bart Cook	c/o Greyhound Lines-West 371 Market Street San Francisco, California
R. N. Dick	c/o Greyhound Lines-West 371 Market Street San Francisco, California

Name	*Address*
William E. Hastings	c/o Greyhound Lines, Inc. 371 Market Street San Francisco, California
F. W. Acherman	c/o The Greyhound Corporation 111 West Clarendon Phoenix, Arizona
William R. Adams	c/o St. Regis Paper Company 150 East 42nd Street New York, New York 10017
Howard Boyd	c/o El Paso Natural Gas Company El Paso Natural Gas Building El Paso, Texas
Estate of Frederick L. Ehrman	480 Park Avenue New York, New York
Paul E. Hoover	c/o Crocker Citizens National Bank 611 West Sixth Street Los Angeles, California
H. A. Montague	c/o Greyhound Food Management 2928 Osborn Road Phoenix, Arizona
Charles S. Munson	893 Sasco Hill Road Southport, Connecticut
Rankin M. Smith	c/o Life Insurance Company of Georgia 600 West Peachtree Street Atlanta, Georgia

Name	*Address*
Hans Stauffer	c/o Stauffer Chemical Company Nyala Farm Road Westport, Connecticut
Harold C. Stuart	c/o Doerner, Stuart, Saunders, Daniel & Langenkamp 1200 Atlas Life Building Tulsa, Oklahoma 74103
James W. Walker	c/o Brody Security & Realty Corp. The address of this company is unknown and cannot with due diligence be ascertained
Leslie B. Worthington	c/o United States Steel Corp. 600 Grant Street Pittsburgh, Penna. 15230
William Wood Prince	c/o Armour & Company 111 West Clarendon Phoenix, Arizona
Milton Steinback	c/o Wertheim & Company 1 Chase Manhattan Plaza New York, New York
Jess Nicks	c/o Armour & Company 111 West Clarendon Phoenix, Arizona
Ralph C. Batastini	c/o The Greyhound Corporation 111 West Clarendon Phoenix, Arizona

Name	*Address*
Robert Minge Brown	c/o McCutchen, Doyle, Brown & Enersen 601 California Street San Francisco, Calif. 94108
David L. Duensing	c/o Armour-Dial, Inc. 179 Entin Road Clifton, New Jersey
Charles R. Orem	c/o Armour & Company 111 West Clarendon Phoenix, Arizona
Clifton B. Cox	c/o Armour Food Company 111 West Clarendon Phoenix, Arizona
M. J. O'Rourke	Greyhound Lines-East 371 Market Street San Francisco, California

4. The property to be sequestered consists in each instance of common stock, 3% Second Cumulative Preferenced Stock and stock unit credits of the Defendant Greyhound Corporation, a Delaware corporation, as well as all options and all warrants to purchase said stock issued to said individual Defendants and all contractural obligations, all rights, debts or credits due or accrued to or for the benefit of any of the said Defendants under any type of written agreement, contract or other legal instrument of any kind whatever between any of the individual Defendants and said corporation.

5. The closing price of the common stock of THE GREYHOUND CORPORATION reported in the Wall

Street Journal dated April 22, 1974 as of April 21, 1974 was $15.25 per share.

6. Upon information and belief, based upon information contained in a proxy statement of the Greyhound Corporation dated April 5, 1974, which purported to disclose beneficial ownership of the common stock of the Greyhound Corporation as of February 21, 1974, the following named Defendants are owners of stock of the Greyhound Corporation as set forth opposite their respective names:

Name	*Common Stock Beneficially Owned as of 2/21/74*
R. F. Shaffer	12,650
J. L. Kerrigan	1,215
Gerald H. Trautman	10,471*
William R. Adams	920
Howard Boyd	1,000
Frederick L. Ehrman (Deceased)	10,000
Charles S. Munson	6,300
Rankin M. Smith	550
Hans Stauffer	3,018
Harold C. Stuart	7,500
James W. Walker	1,000
Leslie B. Worthington	500
Jess Nicks	600
Ralph C. Batastini	5,902
Robert Minge Brown	2,000
David L. Duensing	17,577**
Clifton B. Cox	20,550

* As well as 1,350 warrants to purchase 1 share each of common stock.

** As well as $80,000 principal amount of 6½% conv. sub. deb. due 1990.

7. Upon information and belief, the remaining defendants whose names are set forth in Paragraph 3 hereof are owners of securities of The Greyhound Corporation, the exact amount of which cannot be determined at this time.

8. The interest and value of the remaining property to be sequestered pursuant to Paragraph 4 of this Affidavit is presently unascertainable as it is only within the knowledge of the defendants.

9. The sources of information contained in this Affidavit are the Corporation Division of the Office of the Secretary of State of Delaware, the proxy statement of The Greyhound Corporated dated April 5, 1974 and the Wall Street Journal dated April 22, 1974.

/s/ HOWARD M. HANDELMAN
Howard M. Handelman, Esq.

Sworn to and subscribed before
me the 22nd day of May, 1974.

/s/ (Illegible)
Notary Public.

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as Custodian
for MARK ANDREW HEITNER,

Plaintiff,

v.

THE GREYHOUND CORPORATION,

Defendants.

et al.,

SEQUESTRATOR'S BOND

KNOW ALL MEN BY THESE PRESENTS THAT Stanley C. Macel, III of the County of New Castle and State of Delaware and National Surety Corporation, an Illinois corporation, are held and firmly bound unto the State of Delaware in the sum of One Thousand Dollars ($1,000), lawful money of the United States of America, to be paid to the State of Delaware to which payment well and truly to be made it does bind itself, its successors and assigns, firmly by these presents.

SEALED with its seal and dated this 23rd day of May, 1974.

WHEREAS, the said Stanley C. Macel, III has been appointed Sequestrator of and for all the shares of common

and preferred stock and all options and all warrants to purchase the common or preferred stock and all contractual obligations, rights, debts and credits of The Greyhound Corporation standing in the name of the non-resident defendants, on in or to which they may have or hold any right, title or interest, legal or equitable, with all the rights belonging or appertaining thereto as by reference to the order entered in the captioned action on May 22, 1974 will more fully appear; and

WHEREAS, the said Stanley C. Macel, III has been directed to file and enter a bond conditioned that he shall well and truly perform the duties of this office and shall duly act for all property which may come into his hands as such Sequestrator;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS such that if the above bounded Stanley C. Macel, III shall well and truly perform the duties of his said office, shall abide by and perform any order of this Court respecting the said property, and shall truly act for all property which may come into his hands as such Sequestrator, then this obligation to be void; otherwise, to be and remain in full force and effect.

/s/ STANLEY C. MACEL, III
SEQUESTRATOR

NATIONAL SURETY CORPORATION
By JOHN E. NAYMAN
Attorney-in-fact

Signed, Sealed and
Delivered in the
Presence of:

/s/ PATRICIA E. ABANO

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as Custodian
for MARK ANDREW HEITNER,

Plaintiff,

v.

THE GREYHOUND CORPORATION,
et al.,

Defendants.

PLAINTIFF'S BOND

KNOW ALL MEN BY THESE PRESENTS that National Surety Corporation, an Illinois corporation, is held and firmly bound unto the State of Delaware in the sum of One Thousand Dollars ($1,000), lawful money of the United States of America, to be paid to the State of Delaware, to which payment well and truly to be made the said National Surety Corporation binds itself, its successors and assigns firmly by these presents.

SEALED with the seal of the said National Surety Corporation and dated this day of May, 1974.

WHEREAS, Arnold Heitner has filed in the Court of Chancery of the State of Delaware, in and for New Castle

County, a certain complaint against The Greyhound Corporation, et al.; and

WHEREAS, by an order which was made and entered in the captioned action on May 22, 1974 the Court authorized and directed the seizure and sequestration of all of the shares of common or preferred stock and all options and warrants to purchase stock of The Greyhound Corporation, standing in the name of the non-resident defendants, together with all contractual obligations, rights, debts or credits due or accrued to the benefit of any of the non-resident defendants under any type written agreement, contract or other legal instrument between any of said defendants and said corporation owned by the non-resident defendants herein and all of their right, title and interest, legal or equitable, therein; and

WHEREAS, said order contains the following provision:

> "7. Plaintiff shall file in this Court a bond in the sum of One Thousand Dollars ($1,000) with National Surety Corporation, an Illinois corporation, as surety, which bond need only be executed by the surety. The condition of this bond shall be that plaintiff shall abide with any order of the Court respecting the property herein ordered to be seized and sequestered."

NOW, the condition of this obligation is such that if the said Arnold Heitner shall well and truly indemnify and save harmless the said defendants from the loss or damage, if any, up to but not in excess of One Thousand Dollars ($1,000) which the Court of Chancery of the State of Delaware, in and for New Castle County, finds that they may have sustained by reason of the seizure and retention of property by the Sequestrator, pursuant to said order, then

this obligation to be void; otherwise, to be and remain in full force and effect.

NATIONAL SURETY CORPORATION

By
Attorney-in-fact

Signed, Sealed and
Delivered in the
Presence of:

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian
for MARK ANDREW HEITNER,
Plaintiff,

v.

THE GREYHOUND CORPORATION,
et al.,
Defendants.

MOTION TO QUASH SERVICE OF PROCESS, TO VACATE ORDER OF SEQUESTRATION, AND TO DISMISS

NOW COME defendants R. F. Shaffer, J. L. Kerrigan, F. L. Nageotte, Gerald H. Trautman, Bart Cook, R. N. Dick, William E. Hastings, Howard Boyd, H. A. Montague, Rankin M. Smith, Hans Stauffer, Harold C. Stuart, James W. Walker, Leslie B. Worthington, Jess Nicks, Ralph C. Batastini, Robert Minge Brown, David L. Duensing, Charles R. Orem, Clifton B. Cox, and M. H. O'Rourke (hereinafter the "Moving Defendants"), appearing specially by their attorneys and not intending to submit to the jurisdiction of this Court, and move for an order to quash service of process and sequestration of their property, to vacate the purported order of sequestration entered by this Court on May 22, 1974, and to dismiss this action as to the Moving Defendants for lack of jurisdiction, on the following grounds:

A. The purported order of sequestration entered on May 22, 1974, and the statute and Court rules upon which it is based, constitute a denial of due process of law, in violation of Article I, Section 7, of the Constitution of 1897 of the State of Delaware and of the Fourteenth Amendment to the United States Constitution.

B. The property of the Moving Defendants allegedly sequestered pursuant to the purported order of sequestration entered on May 22, 1974, is not capable of seizure in the State of Delaware.

C. Service, by sequestration or otherwise, attempted to be made upon said Moving Defendants is of no force and effect since such service is constitutionally void, and therefore proceedings taken under color of this Court's order of May 22, 1974, must be vacated and quashed, and this action dismissed as to the Moving Defendants inasmuch as jurisdiction over the Moving Defendants cannot be obtained in the State of Delaware.

/s/ E. N. CARPENTER, II
E. N. Carpenter, II
/s/ R. FRANKLIN BALOTTI
R. Franklin Balotti
Richards, Layton & Finger
4072 DuPont Building
Wilmington, DE 19801
Attorneys for Moving Defendants
R. F. Shaffer, J. L. Kerrigan, F. L. Nageotte, Gerald H. Trautman, Bart Cook, R. N. Dick, William E. Hastings, Howard Boyd, H. A. Montague, Rankin M. Smith, Hans Stauffer, Harold C. Stuart, James W. Walker, Leslie B. Worthington, Jess Nicks, Ralph C. Batastini, Robert Minge Brown, David L. Duensing, Charles R. Orem, Clifton B. Cox, and M. H. O'Rourke, Appearing Specially

Dated: July 30, 1974

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian
for MARK ANDREW HEITNER,
Plaintiff,

v.

THE GREYHOUND CORPORATION,
et al.,
Defendants.

ANSWER OF DEFENDANTS THE GREYHOUND CORPORATION AND GREYHOUND LINES, INC.

FIRST DEFENSE

The complaint, and each separate cause of action thereof, fails to state a claim on which relief can be granted insofar as it alleges acts and conduct preceding the date on which plaintiff acquired his share of stock of The Greyhound Corporation ("Greyhound").

SECOND DEFENSE

First Cause of Action

1. Defendants are without knowledge or information sufficient to form a belief as to the allegations of paragraph 1 of the complaint, except that defendants admit that plain-

tiff is registered on the books of Greyhound as the owner of one share of stock of Greyhound.

2. Defendants admit the allegations of paragraph 2 of the complaint, except that defendants deny that Greyhound is a common carrier.

3. Defendants admit the allegations of paragraph 3 of the complaint.

4. Defendants admit the allegations of paragraph 4 of the complaint, except that they deny that R. N. Dick is the vice president of transportation for Greyhound Lines-West, that William E. Hastings is the staff vice president of Greyhound Lines, Inc., and that the defendants Shaffer, Kerrigan, Nageotte and Cook were the officers of Greyhound who were responsible for the acts alleged in the complaint.

5. Defendants deny the allegations of paragraph 5 of the complaint, except that they admit that on May 27, 1969, defendants filed an action in the United States District Court for the Northern District of Illinois, numbered 69-C-1148, against the United States and the Interstate Commerce Commission, and that the United States and the Interstate Commerce Commission filed a counterclaim for an injunction against plaintiffs in such action.

6. Defendants admit the allegations of paragraph 6 of the complaint.

7. Defendants deny the allegations of paragraph 7 of the complaint.

8. Defendants deny the allegations of paragraph 8 of the complaint.

9. Defendants admit the allegations of paragraph 9 of the complaint.

10. Defendants admit the allegations of paragraph 10 of the complaint and allege that portions of such order are presently on appeal to the United States Court of Appeals for the Seventh Circuit.

11. Defendants admit the allegations of paragraph 11 of the complaint and allege that said judgment is presently on appeal to the United States Court of Appeals for the Ninth Circuit.

12. Defendants deny the allegations of paragraph 12 of the complaint.

13. Defendants deny the allegations of paragraph 13 of the complaint.

14. Defendants deny the allegations of paragraph 14 of the complaint.

15. Defendants deny the allegations of paragraph 15 of the complaint.

16. Defendants deny the allegations of paragraph 16 of the complaint.

17. Defendants deny the allegations of paragraph 17 of the complaint.

18. Defendants deny the allegation of paragraph 18 of the complaint.

Second Cause of Action

19. Defendants incorporate their answers to paragraphs 1 through 18, inclusive, of the complaint.

20. Defendants admit the allegations of paragraph 20 of the complaint.

21. Defendants admit the allegations of paragraph 21 of the complaint.

22. Defendants deny the allegations of paragraph 22 of the complaint.

23. Defendants deny the allegations of paragraph 23 of the complaint.

24. Defendants deny the allegations of paragraph 24 of the complaint.

25. Defendants deny the allegations of paragraph 25 of the complaint.

26. Defendants deny the allegations of paragraph 26 of the complaint.

Third Cause of Action

27. Defendants incorporate their answers to paragraphs 1 through 18, inclusive, and 20 through 26, inclusive, of the complaint.

28. Defendants admit the allegations of paragraph 28 of the complaint.

29. Defendants admit the allegations of paragraph 29 of the complaint.

30. Defendants deny the allegations of paragraph 30 of the complaint.

31. Defendants deny the allegations of paragraph 31 of the complaint.

32. Defendants deny the allegations of paragraph 32 of the complaint.

WHEREFORE, defendants pray that the complaint be dismissed and that they be awarded their costs and such other relief as may be just.

POTTER ANDERSON & CORROON
By /s/ RICHARD F. CORROON
350 Delaware Trust Building
Wilmington, Delaware 19801
Attorneys for defendants
The Greyhound Corporation
and Greyhound Lines, Inc.

July 30, 1974.

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,
Plaintiff,

v.

THE GREYHOUND CORPORATION, et al.,
Defendants.

NOTICE OF MOTION

TO: E. N. Carpenter, II
R. Franklin Balotti
Richards, Layton and Finger
Du Pont Building
Wilmington, Delaware
Richard F. Corroon
Potter, Anderson & Corroon
Delaware Trust Building
Wilmington, Delaware

Please take notice that the attached motion will be presented to the Court on August 28, 1974, at 10:00 a.m.

BAYARD, BRILL & HANDELMAN
By /s/ HOWARD M. HANDELMAN
HOWARD M. HANDELMAN
300 Market Tower
Wilmington, Delaware
Attorneys for Plaintiff

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,
Plaintiff,

v.

THE GREYHOUND CORPORATION, et al.,
Defendants.

MOTION

The plaintiff hereby moves as follows:

1. That the Court enter an order granting leave to the plaintiff to amend his Complaint by adding the following language as a new subparagraph (e) of Paragraph 2:

> 2(e) Each of the individual defendants is a non-resident of the State of Delaware.

2. Upon the entry of the order by the Court granting leave to the plaintiff to amend his Complaint as aforesaid, that the Court enter an Alias Order of Sequestration with respect to defendants R. F. Shaffer, J. L. Kerrigan, F. L. Nageotte, Gerald H. Trautman, Bart Cook, R. N. Dick, William E. Hastings, F. W. Acherman, William R. Adams, Howard Boyd, Estate of Frederick L. Ehrman, Paul E. Hoover, H. A. Montague, Charles S. Munson, Rankin M. Smith, Hans Stauffer, Harold C. Stuart, James W. Walker, Leslie B. Worthington, William Wood Prince, Milton Steinback, Jess Nicks, Ralph C. Batastini, Robert Minge Brown, David L. Duensing, Charles R. Orem, Clifton B. Cox and

M. J. O'Rourke, who are non-residents of the State of Delaware as appears in the Amended Complaint.

3. Upon the entry of the Alias Order of Sequestration as aforesaid, that the Court enter an order vacating the Sequestration Order dated May 22, 1974.

The reason for the foregoing motion is that the specially appearing individual defendants have moved, *inter alia*, to vacate the orginal Order of Sequestration on the ground that in the original Complaint there is no allegation of the non-residency of the individual defendants whose property interests were seized pursuant to the original Order of Sequestration.

BAYARD, BRILL & HANDELMAN

By /s/ HOWARD M. HANDELMAN
HOWARD M. HANDELMAN
300 Market Tower
Wilmington, Delaware
Attorneys for Plaintiff

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,
Plaintiff,

v.

THE GREYHOUND CORPORATION, et al.,
Defendants.

ORDER

AND NOW TO WIT this 28th day of August, 1974, the plaintiff having come before this Court and moved for leave to amend his Complaint, and for the issuance of an Alias Order of Sequestration and the vacation of the Sequestration Order dated May 22, 1974,

IT IS ORDERED that:

1. a) The plaintiff is hereby granted leave to amend his Complaint by adding the following language as a new subparagraph (e) of paragraph 2:

> 2. (e) Each of the individual defendants is a non-resident of the State of Delaware.

b) That defendant Greyhound Corporation and defendant Greyhound Lines, Inc. shall have 20 days from the date hereof to answer or otherwise plead to the Amended Complaint;

c) Service on the non-resident individual defendants shall be in accord with the Alias Order of Sequestration which shall be entered.

2. a) Upon the entry of the Alias Order of Sequestration, the Sequestration Order dated May 22, 1974 shall be vacated without further order of this Court.

b) The Sequestrator appointed herein is directed to notify The Greyhound Corporation through its registered agent in Delaware that all shares of stock in said corporation and all other property, property rights and contractual rights and interests of said individual defendants heretofore seized pursuant to the Order of Sequestration entered herein have been released and discharged from such seizure and sequestration, and that said Order of Sequestration has been vacated.

c) Stanley C. Macel, III, Esquire, the Sequestrator appointed herein, is hereby released from any further duties under the Order of Sequestration entered herein and dated May 22, 1974, and he need not file any report to this Court pertaining to such sequestration. Said Sequestrator is hereby allowed the sum of $100.00 for his services as Sequestrator to be paid within five days from the date of this Order by the Register in Chancery from funds deposited by the Plaintiff for this purpose, but reserving to the Court the right hereafter to tax the amount of said allowance as part of the costs of this action and to direct by whom shall be made, by way of reimbursement or otherwise.

d) The Sequestrator and the Plaintiff and the surety on their bonds be and they are hereby discharged from the obligations on the bonds heretofore entered herein by them.

/s/ Grover C. Brown
Vice Chancellor

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
In and for New Castle County

Civil Action No. 4514

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,
Plaintiff,

v.

THE GREYHOUND CORPORATION, et al.,
Defendants.

ALIAS ORDER OF SEQUESTRATION

This 28th day of August, 1974, it appearing from the Amended Complaint that R. F. SHAFFER, J. L. KERRIGAN, F. L. NAGEOTTE, GERALD H. TRAUTMAN, BART COOK, R. N. DICK, WILLIAM E. HASTINGS, F. W. ACHERMAN, WILLIAM R. ADAMS, HOWARD BOYD, ESTATE OF FREDERICK L. EHRMAN, PAUL E. HOOVER, H. A. MONTAGUE, CHARLES S. MUNSON, RANKIN M. SMITH, HANS STAUFFER, HAROLD C. STUART, JAMES W. WALKER, LESLIE B. WORTHINGTON, WILLIAM WOOD PRINCE, MILTON STEINBACK, JESS NICKS, RALPH C. BATASTINI, ROBERT MINGE BROWN, DAVID L. DUENSING, CHARLES R. OREM, CLIFTON B. COX and M. J. O'ROURKE are non-residents of the State of Delaware having property in the State of Delaware.

It is, upon motion of HOWARD M. HANDELMAN, ESQUIRE, attorney for the plaintiff, ordered as follows:

1. The defendants named in the preceding paragraph shall appear in this Court and answer the Complaint on or

before the 11 day of October, 1974 and a summons shall be issued directing them to appear on said date. On or before the 6 day of September, 1974, the Register shall send by certified mail to each of said defendants at his address as set forth in the Affidavit of Howard M. Handelman, executed on the 22nd day of August, 1974, a copy of the summons, of the Complaint and of this Order. The Register shall cause a copy of this Order to be published in a newspaper published in the City of Wilmington, New Castle County, State of Delaware, once a week for three consecutive weeks, commencing the week following the entry of this Order.

2. Stanley C. Macel, III, Esquire, of the City of Wilmington, State of Delaware, is hereby appointed Sequestrator to seize and hold pursuant to the succeeding terms of this Order, property of the defendants in the State of Delaware, consisting of common stock, 3% Second Cumulative Preference Stock, stock unit credits, of the Greyhound Corporation and all options and all warrants to purchase the common or preferred stock of said corporation issued to the defendants and all contractual obligations, rights, debts or credits due or accrued to or for the benefit of any of said defendants under any type of written instrument, contract or other legal instrument of any kind whatever between any of the defendants and said corporation (hereinafter "property").

3. The Sequestrator shall have power to seize the aforesaid property standing in the name of said defendants, or in or which they may have or hold any right, title or interest, legal or equitable, with all the rights belonging or appertaining to the aforesaid property, including any and all dividends or interest payments which may be due or payable with respect to said property. The property may be

sold under an Order of this Court to pay the demand of the plaintiff in this cause if any of the aforesaid named defendants do not appear or do otherwise default; and, subject to the provisions of paragraph 4 hereof, said property shall remain subject to such seizure and may be sold to satisfy any decree made in this cause unless security sufficient to this Court shall be given to secure the release thereof.

4. In the event that the defendants or any one of them shall make a bona fide sale or sales of any of the aforesaid property seized hereunder, and shall receive therefor not less than the market price at the time of sale and shall deposit with the Sequestrator the proceeds of such sale or sales, the Sequestrator shall forthwith advise the Greyhound Corporation of such facts and thereupon the property sequestered and seized and so sold shall be released from such sequestration and seizure without further action of any kind by the Sequestrator or this Court; and in such event, the proceeds of any such sale shall be held by the Sequestrator until further order of this Court in lieu of the property initially seized and so sold; provided, further, that the proceeds of any such sale or sales shall be subject to investment and reinvestment by the Sequestrator in such property and upon such terms and conditions as the defendants may from time to time direct in writing, provided always that the property in which such proceeds are invested and reinvested (as well as any uninvested proceeds of any sale of such property) shall be held by and in the name of the Sequestrator, pursuant to the terms of this Order and until further Order of this Court.

In the event that said Greyhound Corporation shall desire to make any payments under any agreement, contract or other legal instrument of any kind whatsoever between any of said defendants and said corporation being

seized under this Order by the Sequestrator, any such obligations, rights, debts or credits may be discharged by the payment of the sums due from said corporation, as may be appropriate, to the Sequestrator and said corporation, as may be appropriate, may receive a full and complete discharge of said contractual obligations, rights, debts or credits from each or any of said defendants, and the Sequestrator hereinbefore appointed; and in such event, the proceeds of the payment of any of the aforesaid contractual obligations, rights debts or credits shall be held by the Sequestrator until the further order of this Court in lieu of the contractual obligations, rights, debts, or credits initially seized and so paid or discharged, provided further that the proceeds of any such payment or payments shall be subject to investment and reinvestment by the Sequestrator upon such terms and conditions as each or any of said defendants may from time to time direct in writing; provided always that the property in which such proceeds are invested and reinvested (as well as any uninvested proceeds of any such payment) shall be held by and in the Sequestrator, pursuant to the terms of this Order and until the further Order of this Court.

5. The Sequestrator shall forthwith serve upon the Greyhound Corporation a certified copy of this Order and demand that said corporation shall (a) deliver to him within ten (10) days after such service a statement of the number of shares of stock, options and warrants held or owned or standing in the names of each of said defendants, or in or to which all or any of said defendants have any right, title or interest, legal or equitable, with the number or numbers of the certificate or certificates or note or notes or other marks distinguishing the same and the dates the same were issued, and all rights of any kind thereon belonging or appertaining; (b) deliver to him within ten (10)

days after such service a statement of the number of options and warrants to purchase shares of the common and perferred capital stock held by each of said defendants and the mark or symbol used to identify any written evidence of such options or warrants; (c) cause entries to be made on the books of the Greyhound Corporation showing that the securities held or owned or standing in the name of said defendants or held beneficially for them and the rights or interest therein are held by such Sequestrator; (d) cause entries to be made on the proper records of such Greyhound Corporation showing that all said options and warrants to purchase shares of stock in said corporation are held by such Sequestrator; (e) demand that said Greyhound Corporation shall not until further Order of this Court pay any or all of the contractual obligations, rights, debts or credits due under any type of agreement, contract or other legal instrument of any kind whatever between any of said defendants and said corporation except as hereinbefore provided in paragraph 4 and that none of the said defendants shall receive any such payment, except in conformity with the further Order of this Court; (f) in general and subject to the provisions of paragraph 4 hereof, do all acts necessary to hold and perserve the said securities, options and warrants and said contractual obligations, rights, debts or credits until further Order of this Court.

6. The Sequestrator shall qualify by filing in this Court a bond in the sum of One Thousand Dollars ($1,000.00) with National Surety Corporation, an Illinois corporation as surety, which bond need only be executed by the surety. The condition of said bond shall be that the Sequestrator shall well and truly perform the duties of this office and shall duly account for all property which may come into his hands as such Sequestrator.

7. Plaintiff shall file in this Court a bond in the sum of One Thousand Dollars ($1,000.00) with National Surety Corporation, an Illinois corporation as surety which bond need only be executed by the surety. The condition of said bond shall be that the plaintiff shall abide with any Order of the Court respecting the property herein ordered to be seized and sequestered.

/s/ GROVER C. BROWN
Vice Chancellor

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,
Plaintiff,

v.

THE GREYHOUND CORPORATION, et al.,
Defendants.

AFFIDAVIT OF HOWARD M. HANDLEMAN

HOWARD M. HANDELMAN, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of Delaware and a member of the firm of BAYARD, BRILL & HANDELMAN, attorneys for plaintiff in this action.

2. This affidavit is filed in support of plaintiff's motion for an alias order of sqeuestration pursuant to 10 Del. C. §366.

3. The individual defendants named in this action are non-residents of the State of Delaware whose last known post office addresses are as follows:

Name	*Address*
R. F. Shaffer	c/o The Greyhound Corporation 111 West Clarendon Phoenix, Arizona

Name	*Address*
J. L. Kerrigan	c/o The Greyhound Lines, Inc. 371 Market Street San Francisco, California
F. L. Nageotte	c/o Greyhound Lines—West 371 Market Street San Francisco, California
Gerald H. Trautman	c/o The Greyhound Corporation 111 West Clarendon Phoenix, Arizona
Bart Cook	c/o Greyhound Lines—West 371 Market Street San Francisco, California
R. N. Dick	c/o Greyhound Lines—West 371 Market Street San Francisco, California
William E. Hastings	c/o Greyhound Lines, Inc. 371 Market Street San Francisco, California
F. W. Acherman	c/o The Greyhound Corporation 111 West Clarendon Phoenix, Arizona
William R. Adams	c/o St. Regis Paper Company 150 East 42nd Street New York, New York 10017
Howard Boyd	c/o El Paso Natural Gas Company El Paso Natural Gas Building El Paso, Texas

Name	*Address*
Estate of Frederick L. Ehrman	480 Park Avenue New York, New York
Paul E. Hoover	c/o Crocker Citizens National Bank 611 West Sixth Street Los Angeles, California
H. A. Montague	c/o Greyhound Food Management 2928 Osborn Road Phoenix, Arizona
Charles S. Munson	893 Sasco Hill Road Southport, Connecticut
Rankin M. Smith	c/o Life Insurance Company of Georgia 600 West Peachtree Street Atlanta, Georgia
Hans Stauffer	c/o Stauffer Chemical Company Nyala Farm Road Westport, Connecticut
Harold C. Stuart	c/o Doerner, Stuart, Saunders, Daniel & Langenkamp 1200 Atlas Life Building Tulsa, Oklahoma 74103
James W. Walker	c/o Brody Security & Realty Corp. The address of this company is unknown and cannot with due diligence be ascertained

Name	*Address*
Leslie B. Worthington	c/o United States Steel Corp. 600 Grant Street Pittsburgh, Pennsylvania 15230
William Wood Prince	c/o Armour & Company 111 West Clarendon Phoenix, Arizona
Milton Steinback	c/o Wertheim & Company 1 Chase Manhattan Plaza New York, New York
Jess Nicks	c/o Armour & Company 111 West Clarendon Phoenix, Ariozna
Ralph C. Batastini	c/o The Greyhound Corporation 111 West Clarendon Phoenix, Arizona
Robert Minge Brown	c/o McCutchen, Doyle, Brown & Enersen 601 California Street San Francisco, Calif. 94103
David L. Duensing	c/o Armour-Dial, Inc. 179 Entin Road Clifton, New Jersey
Charles R. Orem	c/o Armour & Company 111 West Clarendon Phoenix, Arizona

Name	*Address*
Clifton B. Cox	c/o Armour Food Company 111 West Clarendon Phoenix, Arizona
M. J. O'Rourke	Greyhound Lines–East 371 Market Street San Francisco, California

4. The property to be sequestered consists in each instance of common stock, 3% Second Cumulative Preferenced Stock and stock unit credits of the defendant Greyhound Corporation, a Delaware corporation, as well as all options and all warrants to purchase said stock issued to said individual defendants and all contractural obligations, all rights, debts or credits due or accrued to or for the benefit of any of the said defendants under any type of written agreement, contract or other legal instrument of any kind whatever between any of the individual defendants and said corporation.

5. The closing price of the common stock of the Greyhound Corporation reported in the Wall Street Journal dated August 21, 1974 as of August 20, 1974 was $11.75 per share.

6. Upon information and belief, based upon information contained in a proxy statement of the Greyhound Corporation dated April 5, 1974, which purported to disclose beneficial ownership of the common stock of the Greyhound Corporation as of February 21, 1974, the following named defendants are owners of stock of the Greyhound Corporation as set forth opposite their respective names:

Name	*Common Stock Beneficially Owned as of 2/21/74*
R. F. Shaffer	12,650
J. L. Kerrigan	1,215
Gerald H. Trautman	10,471°
William R. Adams	920
Howard Boyd	1,000
Frederick L. Ehrman (Deceased)	10,000
Charles S. Munson	6,300
Rankin M. Smith	550
Hans Stauffer	3,018
Harold C. Stuart	7,500
James W. Walker	1,000
Leslie B. Worthington	500
Jess Nicks	600
Ralph C. Batastini	5,902
Robert Minge Brown	2,000
David L. Duensing	17,577°°
Clifton B. Cox	20,550

° As well as 1,350 warrants to purchase 1 share of each of common stock.

°° As well as $80,000 principal amount of 6½% conv. sub. deb. due 1990.

7. Upon information and belief, based upon information contained in RESPONSE TO NOTICE OF SEQUESTRATION OF THE GREYHOUND CORPORATION executed on May 31, 1974, attached hereto as Exhibit "A", and SUPPLEMENTAL RESPONSE TO NOTICE OF SEQUESTRATION OF THE GREYHOUND CORPORATION, executed on June 28, 1974, attached hereto as Exhibit "B", the defendants named therein are owners of common stock, warrants, stock options, stock unit credits, debentures and employment contracts, as more particularly described in Exhibits "A" and "B".

8. Upon information and belief, the remaining defendants whose names are set forth in Paragraph 3 hereof are owners of securities of The Greyhound Corporation, the exact amount of which cannot be determined at this time.

9. The interest and value of the remaining property to be sequestered pursuant to Paragraph 4 of this Affidavit is present unascertainable as it is only within the knowledge of the defendant.

10. The sources of information contained in this Affidavit are the Corporation Division of the Office of the Secretary of State of Delaware, the proxy statement of The Greyhound Corporation dated April 5, 1974, the Wall Street Journal dated August 21, 1974, the RESPONSE TO NOTICE OF SEQUESTRATION OF THE GREYHOUND CORPORATION, executed on May 31, 1974 and the SUPPLEMENTAL RESPONSE TO NOTICE OF SEQUESTRATION OF THE GREYHOUND CORPORATION, executed on June 28, 1974.

/s/ HOWARD M. HANDELMAN
Howard M. Handelman

Sworn to and Subscribed before
me the 22 day of August, 1974.

/s/ (Illegible)
Notary Public

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian
for MARK ANDREW HEITNER,

Plaintiff,

v.

THE GREYHOUND CORPORATION,
et al.,

Defendants.

PLAINTIFF'S BOND

KNOW ALL MEN BY THESE PRESENTS that National Surety Corporation, an Illinois Corporation, is held and firmly bound unto the State of Delaware in the sum of One Thousand Dollars ($1,000), lawful money of the United States of America, to be paid to the State of Delaware, to which payment well and truly to be made the said National Surety Corporation binds itself, its successors and assigns firmly by these presents.

SEALED with the seal of the said National Surety Corporation and dated this 28th day of August, 1974.

WHEREAS, Arnold Heitner has filed in the Court of Chancery of the State of Delaware, in and for New Castle County, a certain complaint against The Greyhound Corporation, et al; and

WHEREAS, by an order which was made and entered in the captioned action on August 28, 1974 the Court authorized and directed the seizure and sequestration of all of the shares of common or preferred stock and all options and warrants to purchase stock of The Greyhound Corporation, standing in the name of the non-resident defendants, together with all contractual obligations, rights, debts or credits due or accrued to the benefit of any of the non-resident defendants under any type written agreement, contract or other legal instrument between any of said defendants and said corporation owned by the non-resident defendants herein and all of their right, title and interest, legal or equitable, therein, and

WHEREAS, said order contains the following provision:

> "7. Plaintiff shall file in this Court a bond in the sum of One Thousand Dollars ($1,000) with National Surety Corporation, an Illinois corporation, as surety, which bond need only be executed by the surety. The condition of this bond shall be that plaintiff shall abide with any order of the Court respecting the property herein ordered to be seized and sequestered."

NOW, the condition of this obligation is such that if the said Arnold Heitner shall well and truly indemnify and save harmless the said defendants from the loss or damage, if any, up to but not in excess of One Thousand Dollars ($1,000) which the Court of Chancery of the State of Delaware, in and for New Castle County, finds that they may have sustained by reason of the seizure and retention of property by the Sequestrator, pursuant to said order, then

this obligation to be void; otherwise, to be and remain in full force and effect.

NATIONAL SURETY CORPORATION

By /s/ EDWARD B. CARTER
Attorney-in-fact

Signed, Sealed and
Delivered in the
Presence of:

/s/ (Illegible)

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian
for MARK ANDREW HEITNER,

Plaintiff,

v.

THE GREYHOUND CORPORATION,
et al.,

Defendants.

SEQUESTRATOR'S BOND

KNOW ALL MEN BY THESE PRESENTS THAT Stanley C. Macel, III of the County of New Castle and State of Delaware and National Surety Corporation, an Illinois corporation, are held and firmly bound unto the State of Delaware in the sum of One Thousand Dollars ($1,000), lawful money of the United States of America, to be paid to the State of Delaware to which payment well and truly to be made it does bind itself, its successors and assigns, firmly by these presents.

SEALED with its seal and dated this 28th day of August, 1974.

WHEREAS, the said Stanley C. Macel, III has been appointed Sequestrator of and for all the shares of common and preferred stock and all options and all warrants to purchase the common or preferred stock and all contractual

obligations, rights, debts and credits of The Greyhound Corporation standing in the name of the non-resident defendants, on in or to which they may have or hold any right, title or interest, legal or equitable, with all the rights belonging or appertaining thereto as by reference to the order entered in the captioned action on August 28, 1974 will more fully appear; and

WHEREAS, the said Stanley C. Macel, III has been directed to file and enter a bond conditioned that he shall well and truly perform the duties of this office and shall duly act for all property which may come into his hands as such Sequestrator;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the above bounded Stanley C. Macel, III shall well and truly perform the duties of his said office, shall abide by and perform any order of this Court respecting the said property, and shall truly act for all property which may come into his hands as such Sequestrator, then this obligation to be void; otherwise, to be and remain in full force and effect.

/s/ STANLEY C. MACEL, III
SEQUESTRATOR

NATIONAL SURETY CORPORATION

By: EDWARD B. CARTER
Attorney-in-fact

Signed, Sealed and
Delivered in the
Presence of:

/s/ R. H. HERRMAN

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian
for MARK ANDREW HEITNER,

Plaintiff,

v.

THE GREYHOUND CORPORATION,
et al.,

Defendants.

**ANSWER OF DEFENDANTS
THE GREYHOUND CORPORATION
AND GREYHOUND LINES, INC.
TO THE AMENDMENT COMPLAINT**

1. Defendants admit the allegations of paragraph 2(e) of the amended complaint.

2. For further answer to the amended complaint, the defendants incorporate their answer to the original complaint as though set forth in full herein.

POTTER ANDERSON & CORROON

By /s/ RICHARD F. CORROON
350 Delaware Trust Building
Wilmington, Delaware 19801
Attorneys for Defendants
The Greyhound Corporation
and Greyhound Lines, Inc.

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian
for MARK ANDREW HEITNER,

Plaintiff,

vs.

THE GREYHOUND CORPORATION,
et al.,

Defendants.

MOTION TO QUASH SERVICE OF PROCESS, TO VACATE ALIAS ORDER OF SEQUESTRATION, AND TO DISMISS

NOW COME defendants R. F. Shaffer, J. L. Kerrigan, F. L. Nageotte, Gerald H. Trautman, Bart Cook, R. N. Dick, William E. Hastings, Howard Boyd, H. A. Montague, Rankin M. Smith, Hans Stauffer, Harold C. Stuart, James W. Walker, Leslie B. Worthington, Jess Nicks, Ralph C. Batastini, Robert Minge Brown, David L. Duensing, Charles R. Orem, Clifton B. Cox, and M. H. O'Rourke (hereinafter the "Moving Defendants"), appearing specially by their attorneys and not intending to submit to the jurisdiction of this Court, and move for an order to quash service of process and sequestration of their property, to vacate the purported alias order of sequestration entered by this Court on August 28, 1974, and to dismiss this action as to the Moving Defendants for lack of jurisdiction, in the following grounds:

A. The purported alias order of sequestration entered on August 28, 1974, and the statute and Court rules upon

which it is based, constitute a denial of due process of law, in violation of Article I, Section 7, of the Constitution of 1897 of the State of Delaware and the Fourteenth Amendment to the United States Constitution.

B. The property of the Moving Defendants allegedly sequestered pursuant to the purported alias order of sequestration entered on August 28, 1974, is not capable of seizure in the State of Delaware.

C. Service, by sequestration or otherwise, attempted to be made upon said Moving Defendants is of no force and effect since such service is constitutionally void, and therefore proceedings taken under color of this Court's order of August 28, 1974, must be vacated and quashed, and this action dismissed as to the Moving Defendants inasmuch as jurisdiction over the Moving Defendants cannot be obtained in the State of Delaware.

/s/ E. N. CARPENTER, II
E. N. Carpenter, II

/s/ R. FRANKLIN BALOTTI
R. Franklin Balotti
Richards, Layton & Finger
4072 DuPont Building
Wilmington, DE 19801
Attorneys for Moving Defendants
R. F. Shaffer, J. L. Kerrigan, F. L. Nageotte, Gerald H. Trautman, Bart Cook, R. N. Dick, William E. Hastings, Howard Boyd, H. A. Montague, Rankin M. Smith, Hans Stauffer, Harold C. Stuart, James W. Walker, Leslie B. Worthington, Jess Nicks, Ralph C. Batastini, Robert Minge Brown, David L. Duensing, Charles R. Orem, Clifton B. Cox, and M. H. O'Rourke, Appearing Specially

Dated: September 10, 1974

IN THE
COURT OF CHANCERY OF THE
STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 4514

ARNOLD HEITNER, as custodian
for MARK ANDREW HEITNER,

Plaintiff,

vs.

THE GREYHOUND CORPORATION,
et al.,

Defendants.

STIPULATION

WHEREAS, the Court entered an order of sequestration on May 22, 1974, and certain individual defendants, appearing specially, and the corporate defendants served and filed motions to quash service of process and to vacate said order of sequestration; and

WHEREAS, on August 28, 1974, the Court entered an alias order of sequestration, and certain individual defendants, appearing specially, and the corporate defendants have on September 9-10, 1974, filed motions to quash service of process and to vacate the alias order of sequestration entered by the Court on August 28, 1974; and

WHEREAS, the grounds for the motions of the defendants with respect to the original order of sequestration are substantially the same as those grounds submitted for the

motions of the defendants with respect to the alias order of sequestration; and

WHEREAS, the parties hereto had entered into a brief and argument schedule on the defendants' motions with respect to the original order of sequestration, pursuant to which the individual defendants, appearing specially, and the corporate defendants filed their opening brief on August 13, 1974;

IT IS THEREFORE STIPULATED AND AGREED this tenth day of September, 1974, subject to the approval of the Court, as follows:

1. The motion of the individual defendants, appearing specially, to quash service of process and to vacate the alias order of sequestration entered by the Court on August 28, 1974, and the motion of the corporate defendants with respect to said alias order of sequestration shall be briefed and argued as follows:

Defendants' opening brief	Already filed
Plaintiff's answering brief	October 24, 1974
Defendants' reply brief	November 19, 1974
Argument	November 26, 1974 at 11:00 a.m.

2. The opening brief of the defendants with respect to the original order of sequestration herein is hereby deemed to be the defendants' opening brief on their motions with respect to the alias order of sequestration, and the arguments made therein are hereby deemed to apply to the alias order of sequestration, with the plaintiff having the full opportunity to answer said arguments in his answering brief as though said arguments were made with respect to the

alias order of sequestration entered herein on August 28, 1974.

Howard M. Handelman

Richard K. Herrmann
Bayard, Brill & Handelman
300 Market Tower
Wilmington, DE 19801
Attorneys for Plaintiff
Richard F. Corroon
Potter Anderson & Corroon
350 Delaware Trust Building
Wilmington, DE 19801
Attorneys for Corporate Defendants
E. N. Carpenter, II
R. Franklin Balotti
Richards, Layton & Finger
4072 DuPont Building
Wilmington, DE 19801
Attorneys for Individual Defendants, Appearing Specially

SO ORDERED this 13th day of September, 1974.

/s/ Grover C. Brown
Vice Chancellor

LETTER OPINION

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

Grover C. Brown
Vice Chancellor

Court House
Georgetown, Delaware

May 12, 1975

Howard M. Handelman, Esquire
Bayard, Brill & Handelman
300 Market Tower
Wilmington, Delaware 19801

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Richards, Layton & Finger
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Wilmington, Delaware 19801

Richard F. Corroon, Esquire
Potter, Anderson & Corroon
350 Delaware Trust Building
Wilmington, Delaware 19899

Re: Heitner v. The Greyhound Corporation, et al.
Civil Action No. 4514

Submitted: November 26, 1974

Gentlemen:

This is a stockholders derivative suit brought against and for the benefit of The Greyhound Corporation, a Delaware corporation, as well as against various nonresident officers and directors of Greyhound. The individual defendants have moved specially to quash and vacate the sequestration order which seeks to compel their appearance in this Court and to thus dismiss the complaint against them.

Greyhound has also moved to dismiss. I shall deal with their motions separately.

Because the plaintiff is also a nonresident and because the claims on which the complaint is premised allegedly involve wrongs to the corporation occurring outside this State, the individual defendants charge that the attempt to obtain personal jurisdiction over them through the Delaware sequestration statute constitutes an unconstitutional violation of due process. Defendants rest their position on three primary legal approaches, and, to a degree, the arguments tend to overlap each other. Because of this I feel it only fair to set forth what I perceive each separate thrust to be, with the expectation that if I have unfairly construed any one of them counsel will promptly advise.

The defendants concede that the sequestration statute, 10 *Del.C.* § 366, has been upheld against constitutional attack by the recent decision of this Court in *Gordon v. Michel*, Del.Ch., 297 A.2d 420(1972), and by our federal District Court in *U. S. Industries, Inc. v. Gregg*, D.Del., 348 F.Supp.1004(1972), and 58 F.R.D.469(1973). They suggest, however, that their particular arguments were not considered in *Gordon* and *Gregg* decisions misconstrue the operation of the sequestration statute and therefore should not be followed.

Pervading all of their arguments is the assumption that if the use of the sequestration process is upheld against them under the circumstances of this case, it would permit a nonresident plaintiff to compel the personal appearance of nonresident defendants in a Delaware court, (under the threat of a forfeiture of their property if they did not), by means of a prehearing seizure of property located outside this State based on a complaint which alleges wrongs also occurring outside of this State. This, the defendants say, can in no way be sanctioned as a proper use of service of

process in light of the decisions of the United States Supreme Court in *Sniadach v. Family Finance Corp.*, 395 U.S.337, 23 L.Ed.2d 349, 89 S.Ct.1820(1969), *Fuentes v. Shevin*, 407 U.S.67, 32 L.Ed.2d 556, 92 S.Ct. 1983(1972), *Mitchell v. W. T. Grant Co.*, U.S. , 40 L.Ed.2d 406, S.Ct. (1974), and their various precedential stepchildren. While the picture of the situation as painted by the defendants may evoke an initial wave of sympathy, I feel for reasons expressed hereafter that not all of the elements assumed by them are legally correct.

Also, in view of the recent wealth of judicial decision that has emerged from the swirling and infectious dust of *Sniadach* and *Fuentes*, I feel it appropriate to note a few distinctions at the outset. In the main those cases and their descendants dealt with suits between creditors and debtors wherein the ability of the plaintiff to obtain jurisdiction over the defendant was not in issue. In addition, while the terms "attachment" and "sequestration" stand for generally recognized legal concepts, their precise operational meaning in a given case may well depend on the purpose for which they are authorized by local statute or court rule. Compare, for instance, *Mitchell v. W. T. Grant Co., supra*, where in Louisiana "sequestration" was the process used for the prehearing seizure of specific property in which both the resident plaintiff and defendant claimed an ownership interest.

The primary purpose of "sequestration" as authorized by 10 *Del.C.* § 366 is not to secure possession of property pending a trial between resident debtors and creditors on the issue of who has the right to retain it. On the contrary, as here employed, "sequestration" is a process used to compel the personal appearance of a nonresident defendant to answer and defend a suit brought against him in a court of equity. *Sands v. Lefcourt Realty Corp.*, Del.Supr., 117

A.2d 365(1955). It is accomplished by the appointment of a sequestrator by this Court to seize and hold property of the nonresident located in this State subject to further Court order. If the defendant enters a general appearance, the sequestered property is routinely released, unless the plaintiff makes special application to continue its seizure, in which event the plaintiff has the burden of proof and persuasion. 10 *Del.C.* § 366; Rule 4(db); and see *Gordon v. Michel, supra,* footnote 1.

Here, what has been sequestered is stock held by the individual defendants in Greyhound, a Delaware corporation. Its purpose is to induce such officers and directors to appear and defend the suit brought against them for the benefit of the corporation. The complaint alleges wrongs to the corporation for which the plaintiff wants them held accountable. The ultimate relief sought is unliquidated damages to the corporation which the plaintiff has the burden to establish. Plaintiff does not want to hold their refrigerators or automobiles pending a hearing; he does not even want to hold their stock at this point. He simply wants it held by an officer appointed by the Court so as to entice them to appear, subject to the condition that if they refuse to appear, and if the Court should thereafter be convinced from the proof that they owe damages to the corporation, so much of their sequestered stock as necessary may be sold to satisfy the obligation. With this recitation as to the function of "sequestration" as applied to this case, I turn now to what I understand to be the arguments of the individual defendants.

I.

First the defendants argue that their Greyhound stock cannot be validly seized by the sequestration order since it is not property actually located in Delaware. They claim

that of the 52 jurisdictions that have adopted the Uniform Commercial Code, all but Delaware provide that no attachment of any security or share is valid until the security is actually seized. While acknowledging that 8 *Del.C.* § 169 provides that the "situs of the ownership" of all capital stock of a Delaware corporation is regarded as being in this State for purposes of "title, action, attachment, garnishment and jurisdiction of all courts held in this State," they argue that this is a pure fiction. They say that Delaware has no "control" over the property seized, i.e., the stock certificates, as required by the venerable decision of *Pennoyer v. Neff,* 95 U.S.714, 24 L.Ed.565(1878), but rather it only has control over the corporation that issued the stock. They say that control of the corporation gives no control over the transfer of its shares by shareholders such as the individual defendants. They point out that this was expressly recognized by this Court in *Haas v. Haas,* Del.Ch., 119 A.2d 358(1955). Finally, they theorize, since Delaware's Uniform Commercial Code recognizes that a bona fide purchaser without notice acquires a clear title to stock upon delivery of the certificate, as did *Haas v. Haas* under the previous Uniform Stock Transfer Act, there can be no valid seizure of corporate stock unless the certificates themselves are within this Court's jurisdiction.

The *Haas* case, on which defendants place great reliance, involved a suit by a wife against both her husband and General Motors Corporation to compel shares of stock then registered in the husband's name as a result of his fraudulent actions to be reregistered in the joint names of the husband and wife. Prior to this suit the husband had pledged the stock to a Florida bank as collateral for a loan on which he became in default. The court issued a restraining order against the husband and General Motors but, as it noted, it "did not then obtain actual control of the

certificates." 119 A.2d 360. Subsequent to the restraining order the husband directed the bank to sell the stock so as to pay off the loan, which the bank proceeded to do without knowledge of the Delaware Court proceedings which enjoined his right to transfer. General Motors refused to make the transfer because of the restraining order and the bank intervened as a defendant. Plaintiff sought to dismiss its petition for failure to state a claim, but this motion was denied by the Chancellor. He reasoned under the Uniform Stock Transfer Act (which was then in force) that where a transfer is made by a delivery of certificates and stock powers which are regular on their face, a purchaser without knowledge becomes a bona fide holder for value, and such status is not lost even though an action is pending and a restraining order against the transfer is outstanding. Thus he held that a claim had been stated.

From this the defendant would magically transform statutory rights which protect a bona fide purchaser for value under certain circumstances into the legal principle that the situs of the ownership interests in a Delaware corporation follow and depend upon the location of the stock certificate despite the language of 8 *Del.C.* § 169 to the contrary. I do not agree with this rationalization.

In adopting the Uniform Commercial Code, Delaware intentionally omitted the recommended language of the act which would have mandated the conclusion sought by the defendants. In addition, it was specifically provided that nothing in the Code should in any way affect the provisions of 8 *Del.C.* § 169 and 10 *Del.C.* § 366, among others. See 5A *Del.C.* § 8-317 and the comment thereto. This does not seem to be unreasonable. A shareholder owns a proportionate interest in his corporation which is represented by a stock certificate as well as being reflected on the corporate stock ledger.

Sequestration seeks to seize his ownership interest in the corporation, not merely his documentary indicia of ownership. Thus the fact that a shareholder has the right to transfer his ownership interest in the corporation to another by endorsement and delivery of the certificate offers no foundation for the proposition that the property interest represented by it departs this State's jurisdiction when the certificate crosses the border. Under this theory, a judgment debtor could avoid attachment of his auto, for instance, by simply mailing his title across the state line. Likewise, I presume, a stockholder who lost his certificate could not have his stock interest attached by any court, any where in the event he chose not to seek a new one.

Even in *Haas* it was noted that "for certain purposes such property [stock] has its situs in Delaware and the Uniform Stock Transfer Act does not alter this conclusion." 119 A.2d 362. See also *U.S. Industries, Inc. v. Gregg* at 348 F.Supp.1020 where it was observed that it is constitutionally proper for a state to provide "as Delaware has done," that the situs of the capital stock of its corporations is in the home state.

I cannot conclude that the sequestration of defendants' stock and stock interests is invalid here simply because the stock certificates themselves may be beyond the Court's jurisdiction.

II.

Secondly, defendants contend that sequestration is unconstitutional since it allows a seizure of their property without notice and with no provision whatever for a hearing as to the propriety of the seizure. While conceding for the purpose of this theory that *Gordon v. Michel, supra,* is at present dispositive of the need for notice and a hearing prior to the seizure of their stock, they argue that *Mitchell*

v. W. T. Grant Co., supra, mandates that this is permissible only if the defendant has available to him the means for a prompt and meaningful post-seizure hearing. They point out that under 10 *Del.C.* § 366 a nonresident defendant whose property has been sequestered cannot obtain a post-seizure hearing unless he first submits to *in personam* jurisdiction, and then the hearing to which he becomes entitled goes to the merits of the plaintiff's claim and his right to recover a personal judgment against him rather than to the justification for the sequestration in the first instance. They suggest that this amounts to no hearing at all on the seizure issue.

The short answer to this is that the authorities upon which defendants rely require a prompt hearing to determine whether or not the attachment was proper or if it should be dissolved and the property returned. Under 10 *Del.C.* § 366 the general appearance of the nonresident in the action authorizes him to petition for the immediate release of his property, and a hearing becomes necessary only if the plaintiff opposes this release in an effort to establish some assurance of payment for the judgment he hopes to recover. Thus, under Delaware sequestration, the property can be released from the attachment or a hearing initiated, if necessary, just as soon as the defendant chooses to appear. Assuming arguendo that it is proper to compel his appearance in this manner, then the promptness with which the sequestration is terminated or a hearing convened lies, in the first instance, in the hands of the defendant. Consequently, I cannot conceive that that the failure of either the statute or the Court rules to specifically require a hearing after the seizure is fatal under the rationale of *Mitchell.* (Defendants contend that it is not proper to compel their personal appearance in this way even if they do have attachable property interests in Delaware, but a discussion of this aspect of their motion is best suited for another segment hereof.)

Defendants further argue that under *Fuentes* and *Mitchell* three elements are necessary to constitutionally justify the omission of a pre-seizure hearing, regardless of its purpose. They suggest that these three elements are (1) a legitimate state interest, (2) a need for prompt action and (3) strict control by the state over the monopoly of its legitimate force. Their argument on the need for prompt action is bottomed on their assumption that stock ownership interests are not attachable where the stock certificates themselves are beyond the reach of the Court's jurisdiction. Since this theory has been rejected, there is no need to deal with it further here.

The argument as to a legitimate state interest also relies to a degree on this non-reachable property theory, and likewise loses this measure of its force. In addition, defendants urge that there can be no legitimate state interest such as sanctioned in *Gordon v. Michel* where the plaintiff is also a nonresident and where the cause of action arose outside the state. In *Gordon* it was held that the "interest of a state in aiding *its citizens* in prosecuting claims against nonresident defendants with property in the state has long been recognized." 297 A.2d 422. (Emphasis added.) But, defendants argue, this protective justification does not hold true where the plaintiff is not a citizen of the state.

In this approach, however, it seems to me that the defendants unfairly characterize the suit as an attempt by one nonresident to use the Delaware courts and sequestration process to recover a damage claim against other nonresidents. If this was all there was to it, their objection might be more persuasive. What this characterization overlooks, however, is that this is a derivative action brought to redress wrongs allegedly committed on a cor-

poration which is a creature existing in, under and by virtue of Delaware and its corporate laws. A rectification of any such wrongs and an appropriate recovery would benefit all stockholders of this Delaware entity, not just the plaintiff stockholder. As stated in *Gordon v. Michel* at 297 A.2d 422:

> "There is, indeed, a particular valid governmental interest in compelling appearance in a derivative suit in this jurisdiction because the corporation is organized here, an action can always be brought here for its benefit and the regulation of its internal affairs is governed by Delaware law. Speaking generally, a director or officer defendant should be obliged to respond in this jurisdiction which is in a unique position to make an authoritative determination of 'housekeeping' issues and to grant complete relief."

This being true, why should the interest of Delaware in the management and proper operation of its corporate entities be any less simply because the derivative suit is initiated by a nonresident stockholder as opposed to a resident stockholder? Or because the acts and decisions of management which are complained of actually took place in Illinois rather than in New Castle County? In view of the derivative nature of the suit, I do not feel that the fact that the plaintiff-stockholder here is a nonresident and that the alleged wrongs occurred in another jurisdiction distinguish this situation from *Gordon v. Michel* so as to hold the prehearing sequestration unconstitutional under the authorities cited.

As to the element of strict control by the state over its attachment processes, defendants point out that *Mitchell v. W. T. Grant Co.* was decided after *Gordon v. Mitchel*, and that consequently this Court has not considered *Mitchell's*

requirement that there be provision for review by a judge or other state official of sufficient authority to determine if a summary seizure without notice is appropriate to determine if a summary seizure without notice is appropriate before such a prehearing attachment can validly issue. They insist that the Delaware sequestration process cannot pass this test. Their reasoning runs as follows.

The sequestration statute contains no provision for review by this Court as to the necessity for its use. By case precedent it is established that a plaintiff is entitled to sequestration as a matter of right as long as his application meets procedural formalities, If the application is formally sound, this Court has no discretion to deny this right. *Breech v. Hughes Tool Co.*, Del.Supr., 189 A.2d 428(1963). Nor does the Court have the power to first consider the merits of the claim as a condition to authorizing sequestration. *Trans World Airlines, Inc. v. Hughes*, Del.Ch., 185 A.2d 762(1962), aff'd sub nom, *Breech v. Hughes Tool Co., supra*. Thus, it is argued, this Court has no power to prevent the summary use of its sequestration process by an individual and consequently the Delaware procedure lacks the element of judicial control found necessary in *Mitchell* to support a prehearing seizure without notice.

Again, however, I feel that the purpose of Delaware sequestration must be distinguished from an attachment process which enables a plaintiff to seize property held by another pending a trial on the issue of who has the right to keep it. In this latter case, as indicated by Mitchell, there is a need to have a proper authority review the application to evaluate whether there is probable merit to the claim as well as a danger that the property will be removed or dissipated if notice is first given. These same considerations are present in applications for immediate injunctive relief without notice. A procedure which leaves this determina-

tion to the interested plaintiff cannot pass constitutional muster as the recent trend of decision illustrates.

Here, however, the purpose is to compel the appearance of a nonresident who has property within this State. In order to establish the necessity for service by sequestration, there must be a showing that the defendant is a nonresident. In order to establish the right to proceed in this manner, it must also be shown that the nonresident defendant owns property in this State that can be reached by sequestration. This determination is not left to the plaintiff. On the contrary Rule 4(db) of this Court augments § 366 by providing that "[n]o order shall be entered under 10 *Del.C.* § 366" unless the nonresidency of the defendant appears in the complaint and unless the complaint is accompanied by the affidavit of the plaintiff "or other credible person" showing each defendant's last known address and also describing the property sought to be sequestered, giving its estimated value, identifying the nature of the defendant's title or interest, and disclosing the source of the affiant's information. If any of the foregoing are omitted, a reason must be given therefor. Thus both our Court rule and practice do provide for advance judicial review to determine that there is a factual basis for the service of process in this manner. The dual legal basis for its issuance, if the verified facts support it, is nonresidency plus ownership of property within the state. Being a jurisdictional tool only, its usage is not dependent upon the merits of the complaint as was true in *Fuentes* and *Mitchell*. The attachment powers of the state are not set in motion at the whim of the litigant. They are activated only by an order of this Court after it is satisfied that the plaintiff has demonstrated his right to invoke the sequestration statute so as to obtain jurisdiction over the nonresident defendant in an effort to get the merits of his case before the Court. The

Breech case, as I construe it, holds that the Court has no discretion to deny this statutory right to process once it is satisfied that a plaintiff has shown factors justifying the need to use it. In effect, this seems consistent with the instruction of *Mitchell*.

I find no basis for holding that 10 *Del.C.* § 366 is unconstitutional in that it fails to provide for strict control by the state in the use of its legitimate forces.

III.

Finally, the individual defendants attack § 366 on the theory that it is not truly an *in rem* proceeding, as held in *U.S. Industries Inc. v. Gregg, supra*. While recognizing that a state can obtain jurisdiction over nonresidents by an *in rem* attachment of their property within the state, *Pennoyer v. Neff, supra*, they argue that in such a case jurisdiction can only be acquired to the extent of the value of the property attached. They say that Delaware's sequestration statute clearly violates this since a nonresident, in order to secure the release of his property, must enter a general *in personam* appearance which thus exposes him to unlimited personal liability which may well exceed the value of the property attached. Thus, they contend, such a nonresident defendant is left with two choices once a sequestration order is issued. He can refuse to appear and run the risk of having his property sold to answer for any damages found due from him in his absence, or, he can submit to personal jurisdiction which the Court could not otherwise acquire and thereby expose himself to potential personal liability without limit.

To illustrate their point, they argue that in a true *in rem* proceeding a defendant has a right to appear for the sole purpose of defending the property attached, but that under Delaware's sequestration procedure he is not per-

mitted to do so. They argue that a person has fundamental due process right to remain immune from personal jurisdiction in a state with which he has no substantial relationship, *International Shoe Co. v. Washington,* 326 U.S. 310, 90 L.Ed.2d 95, 66 S.Ct.154(1945), and that due process further dictates that a waiver of this right is valid only if it results from voluntary action, *Hanson v. Denckla,* 357 U.S.235, 2 L.Ed.2d 1283, 78 S.Ct.1228(1958). Thus, they conclude, if a nonresident is compelled to submit generally to the jurisdiction of a court that otherwise would have none over him, in order to defend his property held by that court, there can be no voluntary waiver of this due process right.

However, I see no compelling reason to deviate from the conclusions of Judge Stapleton in *U.S. Industries Inc. v. Gregg,* before whom these same arguments were apparently advanced. At 348 F.Supp.1020 he noted as follows:

> "The state of a corporation's domicile may constitutionally provide, as Delaware has done, that the situs of its capital stock is in its home state. Thus, where stock of a domestic corporation is brought before the court, this provides a sufficient basis for the exercise of its *quasi in rem* jurisdiction even though the defendant may be a nonresident who has had no prior contacts with the forum state.
>
> "Gregg attempts to distinguish the relevant authorities by saying that this is not in reality a *quasi in rem* action. He correctly points out that the avowed purpose of Delaware's sequestration statute is to compel a general appearance and thereby produce a basis for *in personam* jurisdiction. While the statute is concededly designed to produce this result, it does not follow that the action is not one governed by the rules applicable to *quasi in rem* jurisdiction. Unless and until the nonresident defendant elects to enter a general appearance, the power of the court is limited to the application of the property before the court to the plaintiff's claim."

In short, the action as commenced is one against the property of the nonresident so as to induce his appearance, and at that point it is *quasi in rem* at best. If the nonresident is thereafter personally served or enters a general appearance, the action "also partakes of an in personam character." 6 *Am.Jur. 2d* 571, Attachment & Garnishment § 14. To the same effect: *Ownbey v. Morgan,* 256 U.S.94, 65 L.Ed.837, 41 S.Ct.433(1921); *Nelson v. McCormick,* Mich. Supr., 54 N.W.2d 694(1952); *Sherwood v. Porter,* Ida.Supr., 76 P.2d 928(1938).

Moreover, the defendants' argument that sequestration is unconstitutional because it compels them to submit to possible personal liability in excess of the value of the property seized seems to necessarily acknowledge that it is constitutional to compel their appearance through attachment to the extent of that property value. Compare *Pennoyer v. Neff, supra.* Thus it appears that their argument goes more to the effect of any judgment that the plaintiff might recover than it does to his right to compel their personal appearance by sequestration process. It seems to be an argument that it is unconstitutional to compel a nonresident to appear at all where there is a possibility that the plaintiff is seeking to recover an amount in excess of that which the law will allow even though he may be entitled to recover some lesser amount. I do not feel that this constitutes a valid constitutional attack in view of the long established authorities approving Delaware's jurisdictional attachment processes.

I thus find no basis in the arguments of the individual defendants to vacate the sequestration order and to dismiss the complaint against them.

IV.

The final item for consideration is the separate motion of the defendant Greyhound to either quash or modify the sequestration order. This motion stems from the language of the order which authorizes the sequestrator to demand that Greyhound make appropriate entries on its books to show that the securities owned by the individual defendants are being held by the sequestrator and that Greyhound further "do all acts necessary to hold and preserve these securities." The notice given Greyhound by the sequestrator pursuant to the order also directs the corporation "not to transfer or permit to be transferred any of said shares of stock" unless authorized by the sequestration order or subsequent order of the Court.

Greyhound points to the fact that the stock interests sequestered here are represented by negotiable securities, that both the certificates and their owners are outside Delaware, and that there is no order prohibiting the individual defendants from selling or transferring their shares to a purchaser who has no knowledge of these proceedings. Thus it suggests that the individual defendants are free to sell or transfer their stock certificates and retain the proceeds. Greyhound further points out that under the Uniform Commercial Code adopted by Delaware, securities are negotiable instruments, 5A *Del.C.* § 8-301, title passes upon the delivery of the certificate, 5A *Del.C.* § 8-102, and a bona fide purchaser acquires it "free of any adverse claim." 5A *Del.C.* § 8-105.

Greyhound also relies on the construction given to similar provisions of the Uniform Stock Transfer Act by Chancellor Seitz in *Haas v. Haas, supra,* wherein he held that even though Delaware had jurisdiction to determine ownership of stock under the statute placing its situs in Delaware for certain purposes, it must do so "with a recognition

of rights created by virtue of our Uniform Stock Transfer Act." 119 A.2d 362. The Chancellor further stated as follows at this same reference:

> "The statute giving this Court jurisdiction of such matters simply establishes the mechanics of service upon non-residents . . . and does not purport to freeze rights with respect to the ownership of property which may be brought within its ambit, particularly where 'negotiable' indicia of ownership are outstanding."

Thus, Greyhound's argument continues, since a bona fide purchaser of stock certificates takes free of adverse claims, he is entitled to insist that the issuer register the transfer of shares sold to him whether or not the transfer was rightful. 5A *Del.C.* § 8-401(1) (e). If the issuer refuses to do so or improperly delays, it becomes liable for any loss resulting to the purchaser. 5A *Del.C.* § 8-401(2). Consequently Greyhound asserts that the sequestration order which prohibits it from transferring any stock now owned by the individual defendants clearly exposes it to liability at the suit of a bona fide purchaser, transferee or pledgee of the individual defendants who would have a right under Delaware law to have it transferred.

As additional injury, it suggests that if it is to be bound by the sequestration order the commercial world will soon become aware that despite Delaware's adoption of the Uniform Commercial Code, stocks of Greyhound purchased on a national exchange may not be transferable because of undisclosed liens. This, it says, will cast a shadow over the tradeability of its listed stock and thus the derivative action ostensibly brought for its benefit will actually cause it immeasurable injury.

Because it contents that in either event it will suffer a deprivation of its property without due process, it asks that

the sequestration order either be vacated or else modified so as to exclude negotiable securities from its operation.

Greyhound urges that as a matter of policy its motion should be granted in order to show that Delaware favors the free and open transfer of stock as opposed to the confusion and loss that could flow from purchases of stock without knowledge of court-imposed attachment restriction on their transfer. I think, however, that the General Assembly spoke to this policy issue when it enacted the modified version of the Uniform Commercial Code in this State. 5A *Del.C.* § 8-317 reads in pertinent part as follows:

> "§ 8-317. Effect on attachment and sequestration laws; attachment or levy upon security
>
> "(1) Nothing contained in this title shall repeal, amend or in any way effect the provisions of sections 169 and 324, title 8, or sections 365 and 366, and chapter 35, title 10; and to the extent that any provision of this title is inconsistent with such sections, sections 169 and 324, title 8, and 365 and 366 and chapter 35, title 10, shall be controlling."

Thus by its terms the Delaware Uniform Commercial Code clearly provides that a proper sequestration, pursuant to 10 *Del.C.* § 366, of corporate stock having its situs in Delaware, pursuant to 8 *Del.C.* § 169, shall not be rendered invalid by any rights otherwise granted to owners or transferees of corporate stock by other provisions of the Code. In view of this I fail to see how it is within my power to declare as a matter of policy that sequestration is invalid as to securities having their situs in Delaware merely because they are made negotiable upon delivery by other portions of the Code. The intent of the statute would seem to accord some measure of protection to Greyhound if it should

refuse to register a transfer because it is complying with the sequestration order and thus 5A *Del.C.* § 8-317.

Two other factors should be noted. First, although *Haas* holds that the status of a bona fide holder for value is not necessarily lost because an action is pending concerning the ownership of stock or a restraining order against its transfer is outstanding, it must be kept in mind that that case involved a suit against the issuer and the record owner to compel a reregistration plus a restraining order against transfer pending a hearing. It did not involve an attachment of the stock by a court-appointed sequestrator. Obviously then, *Haas* arose from a violation of a restraint imposed on the defendants and thus involved no attempt by the Court to exercise control over either the stock certificates or the stock itself because of its situs. No doubt this same result would hold true under the Uniform Commercial Code in a similar factual setting. At the same time, I do not feel that *Haas* requires a reading of any more than what it says, namely, that where one makes a bona fide acquisition of stock from an owner who has been enjoined from transfering it, without knowledge of such restraint, and consequently where the stock itself was never before the court, his title is not necessarily defeated because of the existence of the *in personam* order against his transferor. I see no reason to read it as holding the same result to apply where the action is a *quasi in rem* proceeding to seize the stock itself, especially in light of the aforesaid legislative mandate.

Secondly, as pointed out in *Trans World Airlines, Inc. v. Hughes Tool Company*, Del.Ch., 187 A.2d 350(1962), our sequestration practice attempts to minimize the burden placed on one whose stock has been sequestered by giving him the right to control the investment of his seized property pending his appearance. The order does so here by

allowing the individual defendants to authorize the transfer and sale of the stock at any time on the condition that the proceeds be deposited with the sequestrator subject to investment and reinvestment by him on such terms and conditions as directed by the defendants. Thus the defendants are free to transfer their stock, and Greyhound is free to register the transfer provided it is done through the sequistrator and the price received is not less than its market value. Also, this Court can permit and consider an application for release from sequestration made by one other than the record owner who claims a prior or superior right to ownership.

In addition, as plaintiff points out, an issuer is only under a duty to register a transfer of securities if, among other things, it has no duty to inquire into adverse claims to them. 5A *Del.C.* § 8-401(1)(c). If it has notice of an adverse claim (as certainly the notice from the sequestrator would provide), it must notify the adverse claimant that it will register the transfer within 30 days unless "an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction." 5A *Del.C.* § 8-403(2)(a). Presumably if such process does issue, the issuer cannot be held liable thereafter for refusing to register the transfer. If court process issued subsequent to a presentation for registration will protect an issuer from liability for failing to do so, I see no reason why process issued prior to such a request would be any less protective.

For these reasons, I feel that Greyhound's fear of liability and loss are more fanciful than real, and similarly I am not convinced that the sequestration order deprives it of property without due process of law.

V.

For the reasons set forth herein, the motions of both the individual defendants and the defendant Greyhound to

quash and vacate the order of sequestration and, in the case of the individual defendants, to dismiss the complaint as to them, are hereby denied.

IT IS SO ORDERED.

Very truly yours,
/s/ GROVER C. BROWN

GCB:mlw
cc: Register in Chancery

IN THE
SUPREME COURT OF THE
STATE OF DELAWARE

—

No. ____, 1975

—

THE GREYHOUND CORPORATION, R. F. SHAFFER, J. L. KERRIGAN, F. L. NAGEOTTE, GERALD H. TRAUTMAN, BART COOK, R. N. DICK, WILLIAM E. HASTINGS, HOWARD BOYD, H. A. MONTAGUE, RANKIN M. SMITH, HANS STAUFFER, HAROLD C. STUART, JAMES W. WALKER, LESLIE B. WORTHINGTON, JESS NICKS, RALPH C. BATASTINI, ROBERT MINGE BROWN, DAVID L. DUENSING, CHARLES R. OREM, CLIFTON B. COX, and M. H. O'ROURKE,

Defendants Below—Appellants,

vs.

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,
Plaintiff Below—Appellee.

—

APPEAL FROM OPINION AND ORDER OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY, BY VICE CHANCELLOR GROVER C. BROWN, DATED MAY 12, 1975, IN CIVIL ACTION NO. 4514 IN THAT COURT.

—

NOTICE OF APPEAL

TO: Howard M. Handelman, Esquire
Bayard, Brill & Handelman
300 Market Tower
Wilmington, DE 19801
Attorneys for Plaintiff Below-Appellee

PLEASE TAKE NOTICE that The Greyhound Corporation, R. F. Shaffer, J. L. Kerrigan, F. L. Nageotte, Gerald H. Trautman, Bart Cook, R. N. Dick, William E. Hastings, Howard Boyd, H. A. Montague, Rankin M. Smith, Hans Stauffer, Harold C. Stuart, James W. Walker, Leslie B. Worthington, Jess Nicks, Ralph C. Batastini, Robert Minge Brown, David L. Duensing, Charles R. Orem, Clifton B. Cox, and M. H. O'Rourke, do hereby appeal to the Supreme Court of the State of Delaware from the opinion and order of the Court of Chancery of the State of Delaware, in and for New Castle County, by Vice Chancellor Grover C. Brown, dated May 12, 1975, in Civil Action No. 4514 in that Court.

/s/ RICHARD F. CORROON
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Wilmington, DE 19801
Attorneys for Defendant Below-Appellant The Greyhound Corporation

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The undersigned, attorney of record for the appellee above named, hereby signifies his acceptance and acknowledgment of service of the foregoing Notice of Appeal, in duplicate, this third day of June, 1975.

/s/
Howard M. Handelman

IN THE
SUPREME COURT OF THE
STATE OF DELAWARE

—

No. 132, 1975

—

THE GREYHOUND CORPORATION, et al.,
Defendants Below, Appellants,

vs.

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,
Plaintiff Below, Appellee.

—

OPINION

Argued: October 15, 1975
Decided: April 15, 1976

Before DUFFY and McNEILLY, Justices and TAYLOR, Judge

Upon appeal from the Court of Chancery. Affirmed in part.

Richard F. Corroon and Richard E. Poole, of Potter Anderson & Corroon, Wilmington, for defendant-appellant The Greyhound Corporation.

Max Terry, Jr., of Terry, Terry & Jackson, Dover, and William W. Schwarzer and Lynn H. Pasahow, of McCutchen, Doyle, Brown & Enersen, San Francisco, for individual defendants-appellants.

Joshua M. Twilley, of Twilley, Jones & Feliceangeli, Dover, and Michael F. Maschio and Carol Faye Simkin, of

Cowan, Liebowitz & Latman, P.C., New York City, for plaintiff-appellee.

DUFFY, Justice:

The single question at issue in this appeal is the constitutionality of the Delaware Sequestration Statute and the related procedures thereunder. In our view, they do not violate due process of law requirements and, accordingly, we affirm the judgment of the Court of Chancery.

I.

The Sequestration Statute, 10 *Del. C.* § 366, has been an integral part of our law since 1927.[1] 35 *Del.L.* ch. 217;

1. In its present form 10 *Del.C.* § 366 provides:

"(a) If it appears in any complaint filed in the Court of Chancery that the defendant or any one or more of the defendants is a nonresident of the State, the Court may make an order directing such nonresident defendant or defendants to appear by a day certain to be designated. Such order shall be served on such nonresident defendant or defendants by mail or otherwise, if practicable, and shall be published in such manner as the Court directs, not less than once a week for 3 consecutive weeks. The Court may compel the appearance of the defendant by the seizure of all or any part of his property, which property may be sold under the order of the Court to pay the demand of the plaintiff, if the defendant does not appear, or otherwise defaults. Any defendant whose property shall have been so seized and who shall have entered a general appearance in the cause may, upon notice to the plaintiff, petition the Court for an order releasing such property or any part thereof from the seizure. The Court shall release such property unless the plaintiff shall satisfy the Court that because of other circumstances there is a reasonable possibility that such release may render it substantially less likely that plaintiff will obtain satisfaction of any judgment secured. If such petition shall not be granted, or if no such petition shall be filed, such property shall remain subject to seizure and may be sold to satisfy any judgment entered in the cause. The Court may at any time release such property or any part thereof upon the giving of sufficient security.

(b) The Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof, the release of such property from seizure and for the sale of the property so seized, and may require the plaintiff to give approved security to abide any order of the Court respecting the property.

"(c) Any transfer or assignment of the property so seized after the seizure thereof shall be void and after the sale of the property is made and confirmed, the purchaser shall be entitled to and have all the right, title and interest of the defendant in and to the property so seized and sold and such sale and confirmation shall transfer to the purchaser all the right, title and interest of the defendant in and to the property as fully as if the defendant had transferred the same to the purchaser in accordance with law."

Sands v. Lefcourt Realty Corporation, Del.Supr., 117 A.2d 365 (1955). Over the years since then a long line of cases has established the purpose of the Statute, its rationale and the procedure thereunder. Reference is made to those cases for a fuller definition of such matters.[2]

In *Ownbey v. Morgan*, 256 U.S. 94, 41 S. Ct. 433 (1921), the United States Supreme Court held that the Delaware foreign attachment statute was constitutional and, since the equitable remedy under § 366 is analogous to foreign attachment, *Sands v. Lefcourt Realty Corporation* supra, it is fair to say that *Ownbey* has been long regarded by the Courts of this State as authority for the constitutionality of the Sequestration Statute. Cf. *Wiley v. Copeland*, Del.Supr., 349 A.2d 211 (1975); *Gordon v. Michel* supra.

By its nature a foreign attachment, whether legal or equitable, involves a prejudgment seizure of property as a basis for jurisdiction and/or as a source of satisfaction for any judgment ultimately awarded on the merits of the claim. Such a proceeding has the seeds if not the fruits of unfairness in permitting the impounding of property before judgment and, under some circumstances, upon thin asser-

2. See, for example, *Sands v. Lefcourt Realty Corporation* supra; *Greene v. Johnston*, Del.Supr., 99 A. 2d 627 (1953); *Loft, Inc. v. Guth*, Del.Supr., 19 A. 2d 721 (1941); *Gordon v. Michel*, Del.Ch., 297 A. 2d 420 (1972); *Trans World Airlines, Inc. v. Hughes Tool Company*, Del.Ch., 187 A. 2d 350 (1962); *Cantor v. Sachs* Del.Ch., 162 A. 73 (1932); Folk, *The Delaware General Corporation Law*, p. 565.

tions of right. But, as the discussion by Justice Pitney in *Ownbey* demonstrates, the practice traces its origin to early colonial days and, indeed, beyond them to the "custom of London." In law, however, as in the life it reflects, what is old is not necessarily good. Neither, we hasten to add, is it necessarily bad. But, as we are often reminded, due process concepts involve evolving standards of fairness and so the test for constitutionality is necessarily dynamic. Much has been decided and written about such concepts in recent years including their implications for Delaware sequestration procedures. See, for example, the thoughtful study by Folk and Moyer, *Sequestration in Delaware: A Constitutional Analysis*, 73 Colum. L. Rev. 749 (1973).

For present purposes the current due process standards must largely be distilled from a quartet of decisions by the United States Supreme Court, all of which involved prejudgment seizures of property; they are: *North Georgia Finishing, Inc., v. Di-Chem, Inc.*, ____ U.S. ____, 95 S. Ct. 719 (1975); *Mitchell v. W. T. Grant Company*, 416 U.S. 600, 94 S. Ct. 1895 (1974); *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S. Ct. 1820 (1969).

Those decisions provide a foundation for renewed constitutional attack upon the Sequestration Statute. The argument seems first to have been made in the Court of Chancery in *Gordon v. Michel* supra, but it was rejected as the Court concluded that *Ownbey* remained viable and that 10 *Del.C.* § 366 still passed constitutional muster. Following *Gordon* other Chancery decisions reached the same result. Then in *Wiley v. Copeland* supra this Court, in a brief *per curiam* opinion, found § 366 constitutional on the same rationale announced in *Gordon*.

This appeal came on for hearing shortly after *Wiley* was decided but we permitted full exploration of the issues

in briefing and at oral argument because of the important questions involved, and because certain arguments are made herein which were not fully answered in *Wiley*.

Against that background, we now focus on this appeal.

II.

This is a stockholder's action, derivative in character and brought on behalf of The Greyhound Corporation (Greyhound) against some twenty-eight individuals (defendants) including directors of Greyhound (or its corporate predecessors) who served at various times between 1957 and 1974. The complaint alleges that Greyhound suffered significant loss and damage as a result of conduct by defendants which is said to have caused Greyhound to be found (by the United States District Court for the Northern District of Illinois) in violation of certain antitrust laws. The complaint also attacks the distribution of benefits under Greyhound's deferred compensation and stock option plans.

None of the defendants is a Delaware resident, all were served under the Sequestration Statute and relevant Rules of the Court of Chancery. Apparently, the Court-appointed Sequestrator seized certain Greyhound shares of stock and/or contract rights which defendants, respectively, had under agreements with Greyhound. The Court of Chancery denied both a motion by the individual defendants to dismiss the complaint for lack of jurisdiction and a motion by all defendants to vacate the order of sequestration. This appeal followed.

III.

The thrust of defendants' argument is that the sequestration procedure is inconsistent with controlling constitu-

tional principles. They say that the procedure, including that which obligates them to appear generally before defending on the merits, violates their right to due process of law.

Defendants argue that the minimum contacts requirements of *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S. Ct. 154 (1945), must be met before *personam* jurisdiction is assumed and they say that they are entitled to a meaningful right to be heard under *Boddie v. Connecticut,* 401 U.S. 371, 91 S. Ct. 280 (1971), before their property may be seized. And, they continue, the passage of time and changing concepts of due process "have rendered *Ownbey* obsolete."

A.

There are significant constitutional questions at issue here but we say at once that we do not deem the rule of *International Shoe* to be one of them. An argument based on that case was made in *Breech v. Hughes Tool Company,* Del.Supr., 189 A.2d 428 (1963), and rejected by this Court. Compare *Hibou, Inc. v. Ramsing,* Del.Super., 324 A.2d 777 (1974). We are not persuaded that *Breech* should now be abandoned. The reason, of course, is that jurisdiction under § 366 remains, as it was in 1963, *quasi in rem* founded on the presence of capital stock here, not on prior contact by defendants with this forum. Under 8 *Del.C.* § 169[3] the "situs of the ownership of the capital stock of all corporations existing under the laws of this State . . . [is] in this State", and that provides the initial basis for jurisdiction.

3. *Del.C.* § 169 reads in full as follows:

"For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this State, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this State, whether organized under this chapter or otherwise, shall be regarded as in this State."

Delaware may constitutionally establish situs of such shares here, *Rogers v. Guaranty Trust Co, of New York,* 288 U.S. 123, 53 S. Ct. 295 (1932); *Jellenik v. Huron Cooper Min. Co.,* 177 U.S. 1, 20 S. Ct. 559 (1900), it has done so and the presence thereof provides the foundation for § 366 in this case. Cf. *Breech v. Hughes Tool Company* supra. On this issue we agree with the analysis made and the conclusion reached by Judge Stapleton in *U.S. Industries, Inc. v. Gregg,* D.Del., 348 F. Supp. 1004 (1972).

We hold that seizure of the Greyhound shares is not invalid because plaintiff has failed to meet the prior contacts tests of *International Shoe.*

As to *Boddie,* we agree that it contains an important summary of due process requirements, including a "meaningful opportunity" to be heard before one is deprived of any significant property interest. But the implication of *Boddie* for this appeal may best be understood, not by reference to its general principles but in light of an analysis of *Sniadach, Fuentes, Mitchell* and other cases dealing with foreign attachments. And now we turn to those cases.

B.

In *Sniadach,* decided in 1969, the Supreme Court invalidated on due process grounds a Wisconsin statute which authorized garnishment of wages, at the request of a creditor's lawyer, before trial without any opportunity for the wage owner to be heard or to tender a defense. In the absence of "notice and a prior hearing," said the Court, the procedure was deemed unconstitutional. But, writing for the Court, Justice Douglas recognized an *Ownbey* exception in so many words; after referring to seizure without notice or hearing he said:

> "Such summary procedure may well meet the requirements of due process in extraordinary situations.

. . . *Ownbey v. Morgan*. . . ." 395 U.S. at 339, 89 S.Ct. at 1821.

Some three years later the Court decided *Fuentes*, in which it invalidated Florida and Pennsylvania prejudgment replevin statutes applied to household goods sold under conditional sales contracts. The statutes denied the purchasers the opportunity to be heard before seizure and that, said the Court, violated due process, in each instance. The writ issued on bare assertions of right and in neither State was a judge involved. Speaking for the Court, Justice Stewart said:

> "We hold that the Florida and Pennsylvania prejudgment replevin provisions work a deprivation of property without due process of law insofar as they deny the right to a prior opportunity to be heard before chattels are taken from their possessor. . . ." 407 U.S. at 97, 92 S.Ct. at 2002.

But, citing *Boddie*, he stated that there "are 'extraordinary situations' that justify postponing notice and opportunity for a hearing"; and he added a footnote, saying:

> "In three cases, the Court has allowed the attachment of property without a prior hearing. In one, the attachment was necessary to protect the public against the same sort of immediate harm involved in the seizure cases—a bank failure. *Coffin Brothers & Co. v. Bennett*, 277 U.S. 29, 48 S.Ct. 422, 72 L. Ed. 768. Another case involved attachment necessary to secure jurisdiction in state court—clearly a most basic and important public interest. *Ownbey v. Morgan*, 256 U.S. 94, 41 S.Ct. 433, 65 L. Ed. 837." *Fuentes v. Shevin* supra 407 U.S. at 91, 92 S.Ct. at 1999, n.23.

Two years later the Court decided *Astol Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S. Ct. 2080 (1974), in which, citing *Fuentes*, *Sniadach* and *Boddie* it again found and applied in Justice Brennan's language "one of those 'extraordinary situations' that justify postponing notice and opportunity for a hearing." In applying the "limited circumstance" test stated in *Fuentes*, he noted that the seizure (of a yacht) served a significant governmental purpose by permitting Puerto Rico to assert *in rem* jurisdiction over the property in order to conduct forfeiture proceedings; the following footnote was cited to that quotation, again implicitly approving *Ownbey:*

> "Cf. *Ownbey v. Morgan*, 256 U.S. 94, 65 L. Ed. 837, 41 S. Ct. 433, 17 ALR 873 (1921), cited with approval in *Fuentes v. Shevin* supra, at 91 n.23, 32 L. Ed. 2d 556."

It seems clear from the writing of three different Justices in the above three cases that until May 15, 1974 *Ownbey* was still viable for some purposes; indeed, all three had referred to the case by name, with explicit or implicit approval.

The next case in time, *Mitchell*, was also decided in 1974. There Justice White referred to prejudgment seizures approved under the special circumstances found in *Ewing v. Mytinger and Casselberry*, 339 U.S. 594, 70 S. Ct. 870 (1950) and then said,

> "More precisely in point, the Court had unanimously approved prejudgment attachment liens effected by creditors, without notice, hearing or judicial order, saying that 'nothing is more common than to allow parties alleging themselves to be creditors to establish in advance by attachment a lien dependent

for its affect upon the result of the suit.' 'The fact that the execution is issued in the first instance by an agent of the State but not from a court, followed as it is by personal notice and a right to take the case into court, is a familiar method in Georgia and is open to no objection.' Coffin Brothers v. Bennett. . . . To the same effect was the earlier case of Ownbey v. Morgan. . . . Furthermore, based on *Ownbey* and *Coffin*, the Court later sustained the constitutionality of the Maine attachment statute. McKay v. McInnes, 279 U.S. 820, 49 S. Ct. 344, 73 L. Ed. 975 (1928).

. . .

The judgment of the Maine court was affirmed without opinion citing *Ownbey* and *Coffin*." *Mitchell v. W. T. Grant Company* supra, ____ U.S. at ____, 94 S. Ct. at 1903.

While the Court's discussion of *Ownbey* is arguably less than explicit approval, it seems clear that it was not overruled and, indeed, in our view the Court looked to it as precedent for approval of the Louisiana sequestration statute in *Mitchell*.

In 1975 the Court decided *North Georgia Finishing, Inc. v. Di-Chem, Inc.* supra, in which it invalidated a Georgia garnishment statute that permitted prejudgment seizure of property on an affidavit of plaintiff or his attorney. The Court noted that in *Fuentes*, Fourteenth Amendment violations were found "[b]ecause the official seizures had been carried out without notice and without opportunity for a hearing or other safeguard against mistaken repossession" and, said Justice White for the Court, "[t]he Georgia statute is vulnerable for the same reasons." While his opinion does not refer to *Ownbey*, the concurrence by Justice Powell cites it as an illustration of "unanimously approved pre-judgment attachment liens" under the "traditional view of procedural due process."

C.

While the significance of these decisions for foreign attachment statutes in the States is by no means complete, or clear, we can, we think, draw two inferences from what the Court has said about *Ownbey*. First, an attachment which is necessary to secure jurisdiction in a State court is an "extraordinary situation" under *Boddie*. *Fuentes* so holds in so many words (denoting it as "clearly a most basic and important public interest") and the same view is echoed in *Astol Calero-Toledo*, in *Mitchell* and by Justice Powell in his concurring opinion in *North Georgia*. The second inference is that, given an "extraordinary situation", pre-seizure notice and hearings are not required by the due process clause,[4] *Jonnet v. Dallas Savings Bank*, 3 Cir. ____ F.2d ____ (1976). Those inferences seem reasonable and they are certainly addressed to the common sense of what is involved: prior notice of seizure would permit a defendant to divest the court of a jurisdiction which, by definition, it has over the *res*—he could simply take it out of the State or defeat jurisdiction by a transfer of title. And a plaintiff would thus lose a right, which he would otherwise have, to take the case into court. We hold that § 366 is not unconstitutional because seizure precedes notice and hearing.

In *North Georgia* the Supreme Court based its ruling on the absence of "notice and . . . opportunity for a hearing or other safeguard." The disjunctive character of that quo-

4. It is not clear whether the presence of adequate safeguards alone will comport with due process where there was no pre-seizure notice and hearing, or whether the safeguard procedure is available only under extraordinary situations as identified in *Boddie*. We need not decide the question because, for the reasons already stated, we think that the United States Supreme Court has said that *Ownbey* qualified under *Boddie* and so, inferentially, does § 366.

tation from Justice White supports our conclusion that prior notice and hearing are not mandated by the Fourteenth Amendment. But "other safeguards" are required if the sequestration procedure is to square with the Constitution. So we must now examine § 366 from that point of view. Precisely what requirements the Court has in mind for safeguards is not certain but some insight is available from what it has approved and what it has criticized. It has said, for example, that there must be a hearing and judicial determination "before one is finally deprived of his property," *Mitchell v. W. T. Grant Company* supra. And in *North Georgia* the Court made a number of criticisms about the procedure, including the fact that the writ issued at the order of a clerk without participation by a judge, the affidavit was sufficient with conclusory allegations made by an attorney without personal knowledge of the facts, the debtor was deprived of the use of the property and there was no provision for an early hearing.

Since the requirements of due process "are not technical, nor is any particular form of procedure necessary," *Mitchell v. W. T. Grant Company* supra, we deem it unnecessary to litmus test Delaware sequestration procedure against every facet of the foreign attachment proceedings approved or invalidated in the governing cases we have reviewed. We review, rather, certain of the significant features of the Delaware procedure which seem relevant to the respective interests of the parties.

D.

As the Third Circuit said in *Jonnet*, a plaintiff has two interests in invoking foreign attachment procedures: to establish jurisdiction in the forum and to restrain a *res* within the control of the Court for eventual payment of a judgment. In Delaware the first of these is the principal and under most circumstances the exclusive basis for sequestration. Indeed, by its terms § 366 permits the "Court [to] . . . compel the appearance of the defendant by the seizure," a purpose underscored by the cases. Cf. *Sands v. Lefcourt Realty Corporation* supra; *Gordon v. Michel* supra.

On this point we pause to note, as did the Vice Chancellor, that *Sniadach, Fuentes, Mitchell* and *North Georgia* all involved prejudgment seizures, by attachment proceedings, for the purpose of collecting moneys claimed to be owed. And so did the most recent decision by the Supreme Court on this question: *Carey v. Bert Randolph Sugar,* ____ U.S. ____, ____ S. Ct. ____, 44 L. W. 4416 (3/24/76). All of these cases involve claims by creditors against resident debtors, none sought attachment to establish state jurisdiction which is what this appeal is all about.[5] While that difference may be determinative in distinguishing this case from creditor type cases, we do not base our conclusion on it.

As to safeguards or protection of a defendant's interest, the following appear significant to us:

(1) An order of Court is required to initiate the § 366 process and, beyond doubt, that requires an order of a Judge of the Court of Chancery who has control of the process at all times.

(2) The property to be seized must be identified with reasonable certainty in the Court order.[6] *Cannon v. Union*

5. The statute permits seizure only if defendant is a non-resident. See § 366, *Wife v. Husband,* Del. Ch., 271 A. 2d 51 (1970). Compare *Astol Calero-Toledo v. Pearson Yacht Leasing Co.* supra.

6. Chancery Rule 4(db) provides in part:

"No order shall be entered under 10 *Del.C.* § 366 unless it appears in the complaint that the defendant or any one or more of the defendants is a nonresident of the State of Delaware and the application therefor is accompanied by the affidavit of a plaintiff or other credible person stating:

(a) As to each nonresident defendant whose appearance is sought to be compelled, his last known address or a statement that such address is unknown and cannot with due diligence be ascertained.

Chemical & Materials Corp., Del.Ch., 144 A.2d 145 (1958). Compare *Baker v. Gotz*, D.Del. 336 F. Supp. 197 (1971); aff'd 492 F.2d 1238; cert. den. 417 U.S. 955, 94 S. Ct. 3084 (1974).

(3) The value of the property seized must be reasonably related to the amount of the claim asserted.[7] *Trans-World Airlines, Inc. v. Hughes*, Del.Ch., 185 A.2d 762 (1962), aff'd 185 A.2d 886 (1962).

(4) Following seizure, notice thereof must be promptly given to defendant. § 366, Chancery Rule 4(db).

(5) A general appearance is required before release of property seized, but under both the statute and the Chancery practice a defendant has a right to appear solely for the purpose of attacking compliance with § 366 and the Rules of Court.[8] *Schwartz v. Miner*, Del.Ch., 133 A.2d 599 (1957). Indeed, defendants are doing that very thing here without having made a general appearance. If sequestration is determined to be valid, each defendant has

6. (Cont'd.)
   (b) The following information as to the property of each such defendant sought to be seized:
      (1) A reasonable description thereof.
      (2) The estimated amount and value thereof.
      (3) The nature of the defendant's title or interest therein; and if such title or interest be equitable in nature, the name of the holder of the legal title.
      (4) The source of affiant's information as to any of the items as to which the affidavit is made on information and belief.
      (5) The reason for the omission of any of the required statements."

7. Sequestration is available only when a money judgment is sought. *Steinberg v. Shields*, Del.Ch., 152 A.2d 113 (1959).

8. Such an appearance is made under Chancery Rule 12(b) by filing a motion to dismiss for lack of jurisdiction. In earlier days a "special appearance" was permissible for the same purpose. See, for example, *Whitman v. San Francisco Bay Toll Bridge Co.*, Del.Ch., 142 A. 783 (1928).

an option to appear generally or not.[9] *Schwartz v. Miner* supra.

(6) After seizure a defendant who has entered a general appearance may petition for release of the property and the "Court shall release such property unless the plaintiff shall satisfy the Court that because of other circumstances there is a reasonable possibility that such release may render it substantially less likely that plaintiff will obtain satisfaction of any judgment secured."

(7) A defendant who elects to appear generally after seizure will be called upon to litigate only those causes of action asserted against him in the original complaint; he may not be confronted with new causes of action. *Tenney v. Jacobs*, Del.Supr., 240 A.2d 138 (1968); *Townsend Corporation of America v. Davidson*, Del.Ch., 181 A.2d 219 (1962)

(8) While the property seized is in the control of the Court, a defendant does not lose all rights over it. Thus the sequestration order entered in this case, which follows what we understand to be the usual practice, states:

> "4. In the event that the defendants or any one of them shall make a bona fide sale or sales of any of the aforesaid property seized hereunder, and shall receive therefor not less than the market price at the time of sale and shall deposit with the Sequestrator the proceeds of such sale or sales, the Sequestrator shall forthwith advise the Greyhound Corporation of such facts and thereupon the property sequestered and seized and so sold shall be released from such sequestration

9. Discovery is available for the purpose of determining whether there has been an effective sequestration, cf. *Kolyba v. Banque Nationale de Paris*, Del.Ch., 316 A.2d 585 (1973), but it may not be had for a fishing expedition to find property subject to seizure. *Chavin v. Gluck*, Del.Ch., 216 A.2d (1965).

and seizure without further action of any kind by the Sequestrator or this Court; and in such event, the proceeds of any such sale shall be held by the Sequestrator until further order of this Court in lieu of the property initially seized and so sold; provided, further, that the proceeds of any such sale or sales shall be subject to investment and reinvestment by the Sequestrator in such property and upon such terms and conditions as the defendants may from time to time direct in writing, provided always that the property in which such proceeds are invested and reinvested (as well as any uninvested proceeds of any sale of such property) shall be held by and in the name of the Sequestrator, pursuant to the terms of this Order and until further Order of this Court.

"In the event that said Greyhound Corporation shall desire to make any payments under any agreement, contract or other legal instrument of any kind whatsoever between any of said defendants and said corporation being seized under this Order by the Sequestrator, any such obligations, rights, debts or credits may be discharged by the payments of the sums due from said corporation, as may be appropriate, to the Sequestrator and said corporation, as may be appropriate, may receive a full and complete discharge of said contractual obligations, rights, debts or credits from each or any of said defendants, and the Sequestrator hereinbefore appointed; and in such event, the proceeds of the payment of any of the aforesaid contractual obligations, rights, debts or credits shall be held by the Sequestrator until the further order of this Court in lieu of the contractual obligations, rights, debts, or credits initially seized and so paid or discharged, provided further that the proceeds of any such payment or payments shall be subject to investment and reinvestment by the Sequestrator upon such terms and conditions as each or any of said defendants may from time to time direct in writing; provided always that the property in which such proceeds are invested and reinvested (as well as any uninvested proceeds of any such payment) shall be held by and in the Sequestrator, pursuant to the terms of this Order and until the further Order of this Court."

In addition to those safeguards, we think that there is another (from a defendant's point of view) which has not been emphasized in the cases but which is implicit in § 366. The statute permits a defendant who has appeared generally to petition for release of seized property and

> "[t]he Court shall release such property unless the plaintiff shall satisfy the Court that because of other circumstances there is a reasonable possibility that such release may render it substantially less likely that plaintiff will obtain satisfaction of any judgment secured."

In order to make such a determination the Court of necessity must be informed not only of the value of the property seized but also of what effect release of the property will have on satisfaction of any judgment which plaintiff may secure. To know that, *i.e.*, what judgment may be secured, the Court must be informed about the possible amount of such judgment and, clearly, that means at least some preliminary inquiry into the merits of the claim. Cf. *Carey v. Bert Randolph Sugar* supra. Compare Vice Chancellor Marvel's 1969 ruling in *Trans World Airlines, Inc. v. Hughes* supra in which he said that ". . . of course, the property . . . seized should always bear some reasonable relationship to the amount of the claim asserted." Manifestly, the com-

plaint or other statement by a plaintiff cannot be conclusive on the value or merits of the claim.

In sum, the sequestration procedure is at all times under the control of a judge; a defendant has a right to litigate compliance with the Statute and the Rules of Court without appearing generally; if the Court determines that there has been a valid seizure a defendant may then elect to appear generally; if he does so appear he is entitled to release of the property unless plaintiff meets the statutory terms; and a defendant is entitled to a hearing to test the reasonableness of the value of the property seized, including to the extent pertinent, the merits of plaintiff's claim.

In our view, § 366 and the related procedures provide a reasonable balancing of interests between plaintiff and defendants and assure to the latter the safeguards required under current guidelines established by the United States Supreme Court.

E.

Defendants' argue also that compelling them to make a general appearance before defending on the merits violates their right to due process. They rely principally on decisions by Courts in New York holding that an obligation under a liability insurance policy may be a basis for jurisdiction over personal injury litigation, but liability of a nonresident defendant who appears is limited to the face value of the policy. *Farrell v. Piedmont Aviation, Inc.*, 2dCir., 411 F.2d 812 (1969);; *Minichiello v. Rosenberg*, 2dCir., 410 F.2d 106 (1968), cert. den., 396 U.S. 844, 90 S. Ct. 69, 24 L.Ed.2d 94 (1969); *Jarvik v. Magic Mountain Corp.*, S.D. N. Y., 290 F. Supp. 998 (1968); *Simpson v. Loehmann*, N.Y.App., 234 N.E.2d 669 (1967); rearg. den., 238 N.E.2d 319 (1968).

We do not regard the rationale of those cases as persuasive authority for the due process argument which de-

fendants make here. As the cited cases indicate, the theory of suit and the practice thereunder spawned a considerable volume of Federal-State litigation which has apparently resulted in settled law in New York. But the attachment theory and the limited liability imposed on an appearing defendant have apparently been adopted only in New York. See *Ann.* 33 A.L.R.3d 992. And even in New York the doctrine is limited to claims based on an insurance policy. Thus in *Simpson v. Loehmann* the New York Court of Appeals said:

> "This, it is hardly necessary to add, means that there may not be any recovery against the defendant in this sort of case in an amount greater than the face value of such insurance policy even though he proceeds with the defense on the merits. Consideration of CPLR 320 (subd. [c]) and its effect in other types of action begun by attachment must, of course, await future cases." 238 N.E.2d at 320.

We decline to proceed here on the basis of what New York alone has done in personal injury claims under insurance policies.

We agree with Judge Stapleton also when he said in *U.S. Industries*, 58 F.R.D. at 479, that there is a "legitimate public interest behind the general appearance rule"; it promotes judicial economy by concentrating the settlement of claims in one jurisdiction or action. And, that is particularly desirable in the kind of controversy here involved. According to the amended complaint, this is essentially an intra-corporate dispute between a complaining shareholder, who sues for the corporation, alleging loss and damage resulting from conduct of defendants in their respective capacities as directors and/or officers of Greyhound. The charges are that defendants caused the Corporation to be

in contempt of orders of the United States District Court for which substantial fines were imposed on Greyhound, caused to violate the anti-trust laws, and unjustly enriched themselves through stock options and deferred compensation plans. Such a controversy surely has a substantial relationship to this forum, *Folk and Moyer* supra, and litigation here will eliminate the possibility of duplicate actions elsewhere with varying results.

We hold that § 366 is not unconstitutional because it requires defendants to appear generally before defending on the merits.

IV.

Defendants argue also that the sequestration procedure is unconstitutional as applied to the interests of security holders whose certificates are located outside the State. They say that the certificates for the seized shares are physically outside Delaware and that the statutory attempt under 8 *Del.C.* § 169 to reserve the situs of shares here is "to indulge in a fiction."

The argument is based largely, if not exclusively, on the right of a bona fide purchaser who acquires a certificate and, so far as we are informed, there is no such purchaser among defendants. As to these defendants, we have already determined that the shares have a situs here, *Rogers v. Guaranty Trust Co. of New York* supra; *Jellenik v. Huron Copper Min. Co.* supra; *U. S. Industries, Inc. v. Gregg* supra; compare *Breech v. Hughes Tool Company* supra, and, for present purposes that is conclusive on this contention.

V.

Finally, we turn to the argument made by Greyhound Corporation, for whose benefit plaintiff alleges that he sues.

Greyhound says that the sequestration order deprives it of property without due process of law. It attacks that part of the order under which the Sequestrator directed it "not to transfer or permit to be transferred any of said shares of stock," (*i.e.*, the seized shares) except pursuant to Court order. Relying on *Haas v. Haas*, Del.Ch., 119 A.2d 358 (1955), Greyhound argues that the individual defendants retain the power to pass good title to their shares to a good faith purchaser and that under the Uniform Commercial Code (6 *Del.C.* §§ 8-301, 8-102, 8-105) such a transferee would take title unaffected by the sequestration proceedings; and, Greyhound continues, it would be obliged to transfer the shares on its books or be liable for any loss resulting from a refusal or a delay in doing so. 6 *Del.C.* § 8-401(2).[10]

The Vice Chancellor disposed of Greyhound's argument on the basis of the Uniform Commercial Code, 5A *Del.C.* § 8-317, which reads:

> "Nothing contained in this subtitle shall repeal, amend or in any way effect the provisions of sections 169 and 324, title 8, or sections 365 and 366, and chapter 35, title 10; and to the extent that any provision of this subtitle is inconsistent with such sections, sections 169 and 324, title 8, and 365 and 366 and chapter 35, title 10, shall be controlling.

He noted the priority of § 366 by the terms of the Uniform Commercial Code and suggested that Greyhound could find protection by complying with the sequestration order and § 8-317.

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10. 6 *Del.C.* § 8-401(2) provides:
"Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer."

As to Greyhound's reliance on *Haas*, he said that the conflict there did not involve a sequestration order and UCC priorities, and that defendants remain free to transfer their stock under the order of sequestration and the general practice. Cf. *Trans World Airlines, Inc. v. Hughes Tool Company*, supra.

In this Court Greyhound points to a number of situations in which it might be caught in a legal dilemma and be faced with a claim for loss. These all contemplate a transfer by a defendant in violation of the sequestration order or a claim by a bona fide purchaser who was made so by a defendant under circumstances which violate the order of sequestration.

None of such facts or claimants are before the Court.

We recognize the desirability of quieting fears about the free transferability of shares traded on a national stock exchange but we are not persuaded that that or any other reason advanced by Greyhound provides a basis on which this Court can or should state an opinion. In brief, there is not before us a controversy calling for a judicial judgment, even on a declaratory basis. Accordingly, we decline to decide the issue.

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Affirmed in all respects except as noted in Section V.

IN THE
SUPREME COURT OF THE
STATE OF DELAWARE

—

No. 132, 1975

—

THE GREYHOUND CORPORATION,
R. F. SHAFFER, et al.,
Defendants Below,
Appellants,

v.

ARNOLD HEITNER, as custodian for
MARK ANDREW HEITNER,
Plaintiff Below,
Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that R. F. Shaffer, J. L. Kerrigan, F. L. Nageotte, Gerald H. Trautman, Bart Cook, R. N. Dick, William E. Hastings, Howard Boyd, H. A. Montague, Rankin M. Smith, Hans Stauffer, Harold C. Stuart, James W. Walker, Leslie B. Worthington, Jess Nicks, Ralph C. Batastini, Robert Minge Brown, David L. Duensing, Charles R. Orem, Clifton B. Cox, and M. H. O'Rourke, the individual defendants below, and individual appellants here, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Delaware, affirming in part the decision of the court below, entered in this action on the 15th day of April, 1976.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

/s/ E. N. CARPENTER, II
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DATED: May 6, 1976